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U.S. Department of Justice
Law Enforcement Assistance Administration
Office of Juvenile Justice and Delinquency Prevention

Reports of the National Juvenile Justice Assessment Centers

A National Assessment of Serious Juvenile Crime and The Juvenile Justice System:

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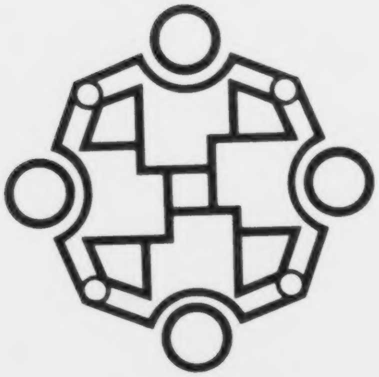
The Need for a Rational Response

Volume III
Legislation, Jurisdiction,
Program Interventions, and
Confidentiality of Juvenile Records



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National Institute for Juvenile Justice and Delinquency Prevention

Reports of the National Juvenile Justice Assessment Centers

A National Assessment of Serious Juvenile Crime and The Juvenile Justice System:

The Need for a Rational Response

Volume III
Legislation, Jurisdiction, Program Interventions, and Confidentiality of Juvenile Records

by
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April 1980

best copy available

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FOREWORD

The National Institute for Juvenile Justice and Delinquency Prevention established an Assessment Center Program in 1976 to partially fulfill the mandate of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, to collect and synthesize knowledge and information from available literature on all aspects of juvenile delinquency.

This report series provides insight into the critical area of how serious juvenile crime impacts on U.S. society and how the juvenile justice system responds to it.

The assessment efforts are not designed to be complete statements in a particular area. Rather, they are intended to reflect the state-of-knowledge at a particular time, including gaps in available information or understanding. Each successive assessment report then may provide more general insight on a cumulative basis when compared to other reports.

Due to differences in definitions and the lack of a readily available body of information, the assessment efforts have been difficult. In spite of such complexity, the persons who participated in the preparation of this report are to be commended for their contribution to the body of knowledge.

James C. Howell, Director
National Institute for Juvenile Justice and Delinquency Prevention

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Administrative editing and production were done by Dorothy O'Neil, Paula Emison, and Deborah Black.

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PREFACE

As part of the Assessment Center Program of the National Institute for Juvenile Justice and Delinquency Prevention, topical centers were established to assess delinquency prevention (University of Washington), the juvenile justice system (American Justice Institute, and alternatives to the juvenile justice system (University of Chicago). In addition, a fourth assessment center was established at the National Council on Crime and Delinquency to integrate the work of the three topical centers.

This report is "A National Assessment of Serious Juvenile Crime and the Juvenile Justice System: The Need for a Rational Response--Volume III: Legislation; Jurisdiction; Program Interventions; and Confidentiality of Juvenile Records." Part A-Legislation includes the findings and conclusions on legislative trends in the Federal and State governments in reaction to serious youth crime. Part B-Jurisdiction reports the findings and conclusions regarding jurisdiction and waiver concerning serious juvenile crimes and offenders. Part C-Program Interventions includes the findings and recommendations resulting from a literature search on programs for intervention and control of serious juvenile offenders. Part D-Confidentiality of Juvenile Records reports the findings and conclusions regarding confidentiality of information concerning serious juvenile crimes and offenders. This volume is one of a series in this topical area. Other volumes are "Volume I: Summary," "Volume II: Definition; Characteristics of Incidents and Individuals; and Relationship to Substance Abuse," and "Volume IV: Economic Impact."

Other work of the American Justice Institute as part of the National Juvenile Justice System Assessment Center includes reports on the status offender, child abuse and neglect, and classification and disposition of juveniles.

In spite of the limitations of these reports, each should be viewed as an appropriate beginning in the establishment of a better framework and baseline of information for understanding and action by policymakers, operational personnel, researchers, and the public on how the juvenile justice system can contribute to desired child development and control.

Charles P. Smith, Director
National Juvenile Justice System Assessment Center

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EXECUTIVE SUMMARY

PURPOSE

This report has been prepared to review the procedures (i.e., detention, jurisdiction, sentencing, and confinement practices) that have been created by statute in the United States (50 States and the District of Columbia) to handle the serious juvenile offender. Hopefully, this review will provide a comprehensive picture of current legislative trends and help depict how the nation is reacting to the problem of serious juvenile crime.

METHOD

The information in this paper was gathered from a statutory analysis of juvenile law in the 50 States and the District of Columbia. The process of review consisted of examining the dispositional methods created specifically for dealing with the serious juvenile offender. Dispositions refer to four juvenile justice processes: (1) detention, (2) jurisdiction of the juvenile court, (3) sentencing, and (4) confinement.

In the analysis, States were identified which have taken significant action to deal with the serious youth crime problem. Each of the 51 jurisdictions was profiled. Once this task was completed, the information contained in the statutory profiles was reviewed and discussed in two ways. First, the data were studied to see the extent to which State statutory provisions have been influenced by Federal policy implicit in task force activities since 1967 and explicit in the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. Then the statutory provisions were reviewed to see what the States had done independently to develop new dispositions to deal with the prolem of the serious juvenile offender.

A similar review was made of some recent unsuccessful legilsative bills as well as pending legislation.

KEY FINDINGS

From a review of Federal efforts since 1967, it does not appear that much direction has been given to the States for dealing with the serious juvenile offender. This may be due to the fact that concrete guidelines for handling juveniles of all types have evolved slowly over the years. Or, it may be that the Federally sponsored task forces and the United States Congress at the time of the passage of the Juvenile Justice and Delinquency Prevention Act of 1974 (or its amendments) consciously avoided this problem. In any case, the States have been left largely to their own devices in searching for solutions.

The newer dispositional means most notable in State legislation for dealing with the serious juvenile offender are more punitive in nature. The reason that they stand out in this regard lies in their radical difference from the traditional methods in past years. This was particularly true in six States (California, Florida, New York, Colorado, Delaware, and Washington) which emerged with more punitive provisions than previously existed in their codes and statutes.

Several jurisdictional changes have been made to deal with serious juvenile offenders. One of these in Florida, provides for mandatory waiver hearings for youth who commit any one of a group of listed target crimes; a second jurisdictional change in both Florida and New York excludes certain offenses from the jurisdiction of the juvenile court; and a third mechanism developed in California creates a presumption in favor of waiver if one of eleven target offenses is alleged.

Colorado, Delaware, and Washington have passed mandatory sentencing laws for juveniles. This type of legislation is entirely new in the juvenile justice field, having been traditionally confined to convicted adults. These laws greatly increase the probability that adjudicated delinquents will serve institutional time.

Finally, California, Florida, and New York have provisions which permit juveniles to be confined in adult and youthful offender facilities. These provisions are very controversial because they allow far more rigorous punishment than is possible in other States.

It should be noted that the dispositional alternatives discussed above have not been adopted in many other States. In fact, most States have not done much to develop new procedures for dealing with the serious offender, at least so far as new legislation is concerned. Their failure to show much, if any, change is primarily due to the fact that their enabling statutes, allowing them to undertake special programs without new legislation for the serious offender, are ambiguous--and hence flexible.

GENERAL CONCLUSIONS

The analysis of State statutory provisions to deal with the serious juvenile offender shows that a small group of more urbanized States now deal more punitively with such youth. This trend has been limited in other States, with the great majority of jurisdictions still maintaining the traditional juvenile court philosophy of rehabilitation. Among those States with more punitive changes, options are divided between waiving the juvenile to the adult court and prescribing mandatory sentences within the juvenile justice system.

CHAPTER I

INTRODUCTION

This report presents the results of an analysis of the statutes in 51 jurisdictions (50 States and the District of Columbia) showing how they have sought to deal with the serious juvenile crime problem. This inquiry is limited to those types of dispositions for juveniles that are spelled out in the statutory codes. These will be discussed under four broad areas: (1) jurisdiction, (2) pre-adjudication detention, (3) sentencing, and (4) post-adjudication confinement. These categories were chosen to organize discussion of the problem of what should be done with the serious juvenile offender in explicit terms. Although other statutory provisions may have affected the dispositions of serious juvenile offenders, such provisions did not come to light in the review.

Chapter II of this paper traces the direction that has resulted from Federal government activities to give to State procedures as indicated in: (1) the 1967 President's Commission on Law Enforcement and the Administration of Justice, (2) the 1973 National Advisory Commission on Criminal Justice Standards and Goals, (3) the 1974 Juvenile Justice and Delinquency Prevention Act, as amended in 1977, and (4) the 1976 Juvenile Justice and Delinquency Prevention Task Force appointed under the auspices of the U.S. Department of Justice. These Federal efforts have addressed multiple facets of the juvenile crime problem and have attempted to formulate a national policy to govern the treatment and handling of youth. A description of these will serve as background for understanding the impetus behind State enactments in this area.

Chapter III will mark the beginning of a series of analytical chapters devoted to a discussion of State statutory provisions to deal with the serious juvenile crime problem. This chapter will compare the Federal recommendations, appearing in Chapter II, with State provisions in all 51 jurisdictions. Then, those States which appear to have followed Federal guidance will be identified with important exceptions as noted.

Chapter IV will explore, in detail, State legislation which is geared toward serious juvenile crime--but which deviates significantly from any recommendation that might have originated at the Federal level of government. This chapter, due to the complex nature of the statutory provisions, will highlight individual States where appropriate. Other State legislative enactments will be identified in accordance with the dispositional mechanism being addressed (e.g., jurisdiction, sentencing).

Chapter V will examine State legislation which was offered to amend the State dispositional mechanisms for dealing with serious juvenile crime, but which was rejected. Though these bills did not become law, they are indicative of movement at the State level to respond to the youth crime problem. Chapter VI will review legislation that is pending enactment but which has not as yet been voted on by the legislature. This latter type of legislation, though important, unfortunately is not available in the majority of States at the time of this writing. Most States, currently, are reviewing the legislation which will be presented early in 1979, and have not finalized their proposals. Thus, a comprehensive review of this type of legislation must be postponed.

Finally, Chapter VII will summarize the direction in which the States seem to be headed as a whole to develop legislation which will deal specifically with serious juvenile crime. This chapter will identify discernible trends in State statutory provisions and will contain some speculation on the importance of these provisions for the handling of juveniles involved in serious crimes.

Some of the issues that arise in this paper concern: (1) when and under what circumstances juveniles should be detained prior to adjudication; (2) whether the juvenile court should have jurisdiction over all offenses, or whether certain offenses and their circumstances should be grounds for waiver or exclusion from court jurisdiction; (3) whether, once a youth is adjudicated delinquent, the disposition should be determinate or indeterminate; and (4) what type of confinement is appropriate for the serious juvenile offender. Unfortunately, it will not be possible to provide definitive solutions to these questions, except insofar as a State legislative provision does so.

CHAPTER II

A LOOK AT FEDERAL DIRECTION

The involvement of the Federal government in the study of juvenile delinquency and youth crime problem has grown steadily over the years. Some of the earliest efforts emerged shortly after the passage of the Illinois Juvenile Court Act in 1899. They include:

- the creation of the Children's Bureau in 1912 by an act of Congress
- the establishment of the Interdepartmental Committee on Children and Youth in 1948
- the Midcentury White House Conference on Children and Youth in 1950
- the President's Committee on Juvenile Delinquency and Youth Crime in 1961
- passage of the Juvenile Delinquency and Youth Offenses Control Act of 1961 (27, p. 1).

The focus of Federal efforts up until 1960 was very broad and included "all matters pertaining to the welfare of children" (26). Subsequently, there was more recognition of the need to develop new ways to control delinquent behavior. This chapter traces the direction Federal policy has taken relating to serious juvenile crime since 1967, beginning with the President's Commission on Law Enforcement and the Administration of Justice.

PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE - 1967

Under the auspices of the 1967 Commission, a number of special task forces were appointed to study various facets of the criminal justice system. One such task force was devoted to the examination of juvenile delinquency and youth crime. One of its guiding propositions was stated in the General Commission Report:

> America's best hope of reducing crime is to reduce juvenile delinquency and youth crime. In 1965, a majority of all arrests for major crimes against property were of people under 21, as were a substantial minority of arrests for major crimes against the person. The recidivism rates for young offenders are higher than those for any other age group. A substantial change in any of these figures would make a substantial change in the total crime figures for the nation (26, p. 2).

This statement clearly recognized the existence of a serious crime problem among youth. But, despite this fact, the Task Force paid little attention to dispositions suitable for youth adjudicated for serious crimes.

The Commission did recognize, however, in its Task Force Report on Juvenile Delinquency and Youth Crime that the juvenile justice system does not handle offenders in a rational manner. For example, serious offenders were often released and the less serious offender held for processing. The Task Force felt it more appropriate for the purpose of community safety to process and adjudicate the "serious offender" (25, p. 17). Discussion of serious offenders led the Task Force to consider waiver or transfer of juveniles to adult court for criminal prosecution. The Task Force emphasized that the decision in Kent v. United States (12) improved the fairness of the waiver process by requiring a hearing, counsel, access to social investigative records, and a statement by the judge as to the reason for waiver. However, the Task Force felt that the waiver procedure often was not a scientific evaluation of the youth's capacity for successfully responding to a juvenile court disposition, but a way to respond to society's insistence on retribution or social protection (26, p. 24).

Thus, reluctantly, the Task Force drafted the following waiver guidelines:

> To be waived, a youth should be over a certain age (perhaps 16); the alleged offense should be relatively grave (the equivalent of a felony, at least); his prior offense record should be of a certain seriousness; and his treatment record discouraging (26, p. 25).

Essentially, the Task Force adopted a position which largely discredited the seriousness of the juvenile crime problem. Marvin E. Wolfgang, for example, in a special paper entitled "The Culture of Youth" stated that "the public image of a vicious, violent juvenile population, producing a seemingly steady increase in violence is not substantiated by the evidence available" (26, p. 150). These observations were based on statistics available from the Uniform Crime Reports (1958-1964) which reported that two-thirds of automobile thefts and about one-half of all burglaries and robberies are committed by persons under 18 years of age. Offenders under age 18 arrested for crimes of violence were generally low proportionally. Homicide arrests were reported at about eight percent for juveniles and those for forcible rape and aggravated assault were about 18 percent (26, p. 150).

The policy of the Commission in 1967 strongly favored maintaining the "rehabilitative ideal" for juveniles. This by-passed the problem of what should be done with the serious offender. As a result, policy discussions dealt with family, environmental, school, and social problems that contribute to the general problem of delinquency. The States were left to deal with the problem of the more serious youth on their own.

REPORT OF THE NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS - 1973

The Task Force work of the National Advisory Commission on Criminal Justice Standards and Goals in 1973 focused on standards in the criminal justice area generally. This fact ultimately precluded any sort of concentrated attention to juvenile justice standards. Brief reference, however, was made to selected problems processing in the juvenile justice system; a few of which dealt with serious delinquent behavior.

Some of the attention devoted to procedures for dealing with the serious or violent offender appears in the volume on standards for Courts. Standard 14.3 provides recommendations for processing certain delinquency cases as adults. The criteria specified for such a prosecution include:

(1) the juvenile involved is above a designated age;

(2) a full and fair hearing has been held on the propriety of the entry of such an order; and

(3) the judge of the family court has found that such action is in the best interest of the public (22, p. 300).

One of the most notable features of this waiver standard, is that there is a reluctance to identify a specific age at which transfer to adult court should be permitted. This fact is recognized in the commentary that accompanies the standard, but notes the fact that a plurality of jurisdictions had specified 16 as the appropriate age (23, p. 301). The Task Force seemed hesitant to take a strong stand on this or any other issue relating to juveniles; choosing instead, to opt for recommendations that were mildly favorable to rehabilitative concerns.

In the Corrections standards volume, the Task Force devoted some additional attention to conditions which warrant detention pending adjudication. Essentially, the conclusion was that detention should be restricted to juveniles charged for an offense which would be criminal if committed by an adult, and this should be considered a last resort, i.e., when no other reasonable alternative is available (21, pp. 259 and 573). This recommendation demonstrates a further reluctance to be specific about the usefulness or necessity of detention, especially as it relates to the serious or violent offender. Comment is made in the Corrections volume that "confinement has little beneficial effect and only serves to make adjustment to society more difficult...."

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

One of the major findings or concerns in the Juvenile Justice and Delinquency Prevention Act of 1974 was that "juveniles account for almost half the arrests for serious crimes in the United States today" (20, Section 101(a)(1)). In attacking this problem Congress declared its purposes were to:

- develop and implement effective methods of preventing and reducing juvenile delinquency;
- develop standards, develop and conduct effective programs to prevent delinquency, divert juveniles from the traditional juvenile justice system and provide critically needed alternatives to institutionalization;
- improve the quality of juvenile justice in the United States; and
- increase the capacity of State and local governments, and public and private agencies, to conduct effective juvenile justice and delinquency prevention and rehabilitation programs; and to provide research, evaluation and training services in the field of juvenile delinquency prevention (20, Section 102(a) and (b)(1-4)).

These provisions indicate that purposes of the Act were broad in scope. In more concrete terms, the Act was meant to de-institutionalize status offenders (e.g., incorrigibles, truants, runaways); to provide additional funding to localities to improve delinquency prevention programs; to establish a Federal assistance program to deal with the problems of runaway youth; and to insure that juveniles would not be detained in the same detention facility quarters as adults.

Neither the President's Crime Commission of 1967, nor the National Advisory Commission of 1973 dealt with the difficulties of the serious juvenile offender in any detail. The Act of 1974 (and its 1977 amendments), while devoting much attention to the needs of juveniles, also largely ignored the serious offender other than in its statement of findings. The dominant concern at the time was to develop a national policy for youth crime, with a heavy emphasis on prevention. The subject of youth violence was either carefully avoided, so that it would not detract attention from the rest of the Act, or perhaps overlooked because of other pressing concerns.

There is some evidence, however, in the Congressional Record on House Hearings for July 1, 1974, that the people who testified on behalf of the bill were aware of a serious juvenile crime problem. For example, there is reference to the fact that:

> ...approximately half of all the serious crimes in the Nation are committed by youth under the age of 18 years. Current methods of treatment and incarceration have failed to stem the rising tide of youth crime--and have in far too many instances graduated adult criminals (27, p. 92).

This statement, however, was later minimized by the following testimony: "I believe that the people who we intend to reach through this legislation are not yet criminals and should not be treated as such" (27, p. 93). Thus, attention continued to be focused on the prevention aspects of the problem, and not on what should be done about the commission of serious crimes by youth.

The provisions of the Act underwent a series of revisions and eventually bills passed by the House and Senate were combined into one bill that was approved as law. These new provisions, which amended the Federal Juvenile Delinquency Act are located in Title 18 of the United States Code. Oddly enough, the provisions approved by the House of Representatives neglected to include any references to methods for dealing with the serious delinquent. This may have been due to the influence of House testimony, cited above, which declared that the Act was to be prevention oriented. However, the Senate included an amendment to alter the provisions for transfer of juveniles to adult courts. This amendment provided that juveniles, age 16 or older, committing an offense which if committed by an adult would be a felony punishable by a maximum penalty of: (1) ten years imprisonment or more, (2) life imprisonment, or (3) death, may be transferred to U.S. District Court on the motion of the Attorney General if in the interest of justice (27, p. 138).

Also, considerations for waiver (transfer to adult court) were recommended:

- age and social background of the juvenile;
- nature of the alleged offense;
- extent and nature of the juvenile's prior delinquency record;
- juvenile's present intellectual development and psychological maturity;
- nature of past treatment efforts and the juvenile's response to such efforts; and
- availability of programs designed to treat the juvenile's behavior problems (27, p. 138).

Some of the waiver criteria specified above are similar to the criteria enunciated in Kent v. United States (12, p. 541) in 1966. However, the Kent criteria, established by the Supreme Court of the United States, were much more explicit and comprehensive:

- the seriousness of the alleged offense and whether the protection of the community requires waiver;
- whether the alleged offense was committed in an aggressive, violent, or premeditated manner,
- whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;
- the prosecutive merit of the complaint;
- the desirability of trial and disposition of the offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with crimes in adult court;
- the sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living; and
- the record and previous history of the juvenile.

Other Senate provisions dealing with dispositions addressed: (1) detention prior to disposition and (2) confinement as one option of a dispositional hearing. The detention amendment, modifying Section 5035 of Title 18, merely states that juveniles should not be confined in locations where they would have regular contact with adults who have been convicted, or who are awaiting trial (12, p. 141). This provision is general and is not specifically related to the serious juvenile offender.

On the subject of confinement following adjudication, the Act amends Section 5037 of Title 18 as follows:

> ...commitment...should not extend beyond the juvenile's twenty-first birthday or the maximum term which could have been imposed on an adult convicted of the same offense...(12, p. 143).

Though the Act did not emphasize the serious juvenile crime problem, it focused public attention on important concerns and established a framework within which the problem could be dealt with.

TASK FORCE ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION - 1976

In compliance with the spirit and provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, a task force was assembled to develop a comprehensive set of standards and goals for juvenile justice. This effort was designed to "play a significant role in the national effort to reduce criminality and encourage a consistent and approved jurisprudence for children and youth" (23, Foreword).

The provisions adopted by the Juvenile Justice Task Force covered wide areas relating to the serious offender. The first provision deals with waiver/transfer of juveniles to adult court, and appears as Standard 9.5 in the Task Force report. The type of offender is specified as follows:

- juvenile charged with a delinquent act (i.e., a violation of criminal law if committed by an adult)
- juvenile 16 years old or older
- alleged delinquent act is: aggravated or heinous in nature or part of a pattern of delinquent acts
- there is probable cause to believe that the juvenile committed the acts
- juvenile is not amenable by virtue of his maturity, criminal sophistication, or past experience in the juvenile justice system, to services provided through the family court

- juvenile has been given a waiver and transfer hearing that comports with due process...(23, p. 303).

These criteria are an attempt by the Task Force to create a more demanding standard for waiver than other Federal recommendations, including those recommended in the Kent case (12, p. 541). The requirement that the alleged delinquent act be "aggravated or heinous in nature: tends to lower the probability that large numbers of youth will be waived arbitrarily to adult court. In the accompanying commentary, the Task Force describes the waiver/transfer provision as a necessary evil due to the different levels of maturity among juveniles. The report rejects provisions for automatic waiver proceedings or waiver based on the fact that an offense would be a felony if committed by an adult (23, p. 304). The Task Force seemed to believe instead that the provisions should be stated in broader terms, with specific safeguards built into the procedure to guard against potential abuse.

Later in the report, criteria for pre-adjudicatory detention of juveniles in delinquency cases were recommended. As part of Standard 12.7, the Task Force suggested that juveniles not be detained unless:

- to insure the presence of the juvenile at subsequent court proceedings;
- to provide physical care...because there is no parent...;
- to prevent the juvenile from harming or intimidating any witness or otherwise threatening the orderly progress of the court proceedings;
- to prevent the juvenile from inflicting bodily harm on others; or
- to protect the juvenile from bodily harm (23, p. 390).

Two of the above provisions of the detention standard permit preventive detention for juveniles that are thought to have violent tendencies. The Task Force makes the point in its commentary that although they would expect preventive detention practices to be used sparingly, it may be necessary under certain circumstances for the protection of society (23, p. 391).

The last major area of emphasis addresses issues associated with the judicial disposition of a serious offender upon adjudication. The Task Force adopted a series of standards in this area. Those which are of interest here are limited to the recommended length of custodial confinement. Standard 14.2 in the Task Force report recommends that dispositional authority for adjudicated delinquents not exceed the juvenile's twenty-first birthday (23, p. 435). This standard, when coupled with Standard 14.4 which recommends that the court employ the least restrictive alternative (23, p. 440) available, sets the tone for the Task Force position. This latter standard (14.4) defines the least restrictive alternative, i.e., "disposition that is appropriate to the seriousness of the delinquent act" (23, p. 440). This reflects a desire to restrict custodial placement to the most serious of delinquent offenders, and implies that courts should seek lesser forms of punishment for juveniles who commit less serious offenses.

SUMMARY

Beginning with the President's Crime Commission, there has been a growing awareness of a need for more Federal guidance to the States on how juvenile delinquents should be handled. At the time of the Crime Commission report, the attitude of State legislatures toward delinquency and youth crime was largely parental in nature. Since that time, the National Advisory Commission Report in 1973, and passage of the Juvenile Justice and Delinquency Prevention Act of 1974, created greater realization within this country of the complex problem of youth crime.

For years the standard mechanism for dealing with a serious or violent juvenile offender has been jurisdictional waiver. This gives the court with original jurisdiction over juveniles the opportunity to transfer a youth to adult criminal court for prosecution. Slowly, standards have evolved to govern this practice and to guard against abuse, culminating with those in the report of the Task Force on Juvenile Justice and Delinquency Prevention (JJDP) in 1976.

With the possible exception of the detention standards drafted and recommended by the JJDP Task Force, which recognizes the possible need for preventive detention of certain juveniles with violent tendencies and, of course, the waiver/transfer option just described, there has been little attempt to explicitly guide the States on how they should deal with serious juvenile offenders.

It is possible that officials at the Federal level have not fully perceived serious juvenile crime and violence as a pressing problem. Certainly in many States, especially those less urbanized, this subject is not very significant. But, in the more urbanized States, it demands direct attention.

CHAPTER III

STATE COMPLIANCE WITH FEDERAL DIRECTION

Federal direction to the States on how to handle the serious juvenile offender has been tentative up to this time. The modest attention directed to the problem, as described in Chapter II, has dealt with issues surrounding: waiver/transfer of juveniles to adult court for criminal prosecution, detention standards, and brief guidelines on confinement.

This chapter documents the extent to which States have followed the Federal direction previously discussed. It is difficult to show that any one of the States actually looked to the Federal government for guidance, even though the provision(s) they adopted are substantially the same as the Federal. However, an inference will be made that if the provisions are essentially alike, that they were a product of one of the Federal recommendations.

One way to illustrate the extent to which the States have followed Federal direction is demonstrated in Table 1 (pp. 28 and 29). The information in Table 1 is based on the statutory analysis of juvenile law in fifty States and the District of Columbia which was carried out as part of the research for this report. The sources for the Federal recommendations given in Table 1 are to be found in Appendix B, together with the pertinent text for each recommendation. This table lists the States under consideration on the vertical axis and the specific Federal recommendation on the horizontal axis. Since State codes are drafted with different degrees of clarity, some interpretation was necessary to determine whether or not the current State provision in effect is the same as a Federal recommendation.

TABLE 1

State Adoption of Federal Guidelines

	Federal Recommendations						
	Crime Commission Waiver Provision	NAC Waiver Provision	NAC Detention Provision	JJDP Act Waiver Provision	JJDP Act Confinement Provision	JJDP Task Force Waiver Provision	JJDP Task Force Detention Provision
Alabama		X					
Alaska							
Arizona							
Arkansas							
California			X		X		
Colorado			X			X	
Connecticut	X						
Delaware							
District of Columbia	X						
Florida					X		X
Georgia							
Hawaii							
Idaho						X	
Illinois						X	
Indiana		X					X
Iowa		X					
Kansas							
Kentucky						X	
Louisiana					X		X
Maine						X	
Maryland						X	
Massachusetts						X	
Michigan						X	
Minnesota		X					
Mississippi							X
Missouri							
Montana	X						X
Nebraska			X				
Nevada							
New Hampshire							
New Mexico	X		X				
Sub-Total	4	4	4	0	3	8	5

	Crime Commission Waiver Provision	NAC Waiver Provision	NAC Detention Provision	JJDP Act Waiver Provision	JJDP Act Confinement Provision	JJDP Task Force Waiver Provision	JJDP Task Force Detention Provision
New Jersey						X	X
New York							
North Carolina			X				
North Dakota	X		X				
Ohio	X		X				
Oklahoma						X	
Oregon							
Pennsylvania	X		X				
Rhode Island			X				
South Carolina							
South Dakota						X	
Tennessee	X		X				
Texas						X	
Utah		X	X				
Vermont							
Virginia	X						X
Washington							X
West Virginia						X	
Wisconsin			X				
Wyoming							X
Sub-Total	5	1	8	0	0	5	4
Total	9	5	12	0	3	13	9

NOTE: Statutory Analysis prepared by Garry L. Kemp, 1978. Federal recommended legislative provisions, Appendix B, page 81.

An "X" in one of the above cells indicates that the State listed on the vertical axis has adopted a legislative provision substantially the same as the Federal recommendation listed on the horizontal axis.

In addition, it should be noted that the State and Federal provisions are compared on the basis of the policy nature of legislative provision. This means that additional restrictions, like the recommended use of a Family Court structure, will not affect the conclusion that the State legislative provisions do or do not reflect Federal guidance.

ANALYSIS OF STATE ACTIVITY

Waiver/Transfer

Based on the notations in Table 1, it is apparent that most State adoptions have focused on the waiver as a means of handling the serious/violent offender. Twenty-seven States currently have a waiver provision that looks substantially like one of the four provisions recommended at the Federal level over the past 11 years. Of those 27 States, nine (33 percent) have provisions like those suggested by the Task Force on Juvenile and Youth Crime of 1967; five States (18 percent) had provisions similar to those recommended by the National Advisory Commission on Criminal Justice Standards and Goals (22); no State has a waiver or transfer provision like the one mentioned in the Juvenile Justice and Delinquency Prevention Act of 1974; and, 13 States (48 percent) have provisions which reflect the intent of the Task Force on Juvenile Justice and Delinquency Prevention from 1976.

The most common procedural elements the States adopted for waiver were related to hearings; consideration of past delinquent acts; the aggravated nature of an offense; the evaluation of the juvenile's amenability to treatment; establishing probable cause; and whether or not a transfer was in the best interests of the child/society. The most striking feature of the State waiver/transfer activity, however, was the strong rejection of the recommended age restriction of 16 years. Twenty out of 27 States, or 74 percent, specified ages below this level.

Detention

In the detention area, 21 States adopted legislative provisions indicative of Federal recommendations. Twelve (57.1 percent) of these 21 States have a provision like that in the National Advisory Commission (NAC) on Criminal Justice Standards and Goals, Task Force on Corrections which recommend detention as a last resort; and nine (42.9 percent) States adopted the basic content of the Juvenile Justice and Delinquency Prevention Task Force provision, which recommends preventive detention in circumstances where the youth is a danger to society.

The tallies under detention required a liberal interpretation. States were deemed to have followed the NAC recommendation if their statute stated that detention could be used under circumstances that demanded it. The problem with this interpretation is that virtually all State detention provisions for juveniles are extremely vague with regard to what should be done with a serious or violent offender; they concentrate instead on explicit provisions which bar the detention of juveniles with adults.

It was much easier to conclude which States followed the JJDP Task Force provision. These States were quite explicit about: (1) detaining juveniles with violent tendencies, either towards persons or property in the community; (2) assuring the juveniles' presence at trial; and (3) protecting the juvenile from harm.

One noticeable factor regarding juvenile detention is that most States have not spelled out very well when or if juveniles alleged to have committed violent acts should be detained. Only the nine States followed the JJDP Task Force in this respect. The other 42, including the 12 adopting the NAC provision, have not.

Confinement

Only three States (California, Florida, and Louisiana) have adopted confinement provisions like the one recommended in the Juvenile Justice and Delinquency Prevention Act of 1974. This recommendation was that juveniles should not be confined any longer than an adult if convicted on the same charge. Most States simply provide that juveniles can be incarcerated for an indeterminate time not beyond the juvenile's twenty-first birthday.

SUMMARY

Perhaps the most important conclusion that can be drawn about State compliance with Federal direction, is the weakness of State reactions to any one Federal recommendation, at least from the standpoint of their statutes. It may be that in practice more States follow Federal guidance than is suspected. On the other hand, it must be remembered that until the Juvenile Justice and Delinquency Prevention Task Force in 1976, Federal policy itself was weak in recognizing a serious juvenile offender problem. It may be that States are still waiting for more concrete direction in this area.

The exact outcome of what States will do as a whole legislatively, if they do not receive more specific direction (suggestion or information) is unknown. However, if left to their own devices, especially with public pressure stemming from the publicity of sensational criminal acts committed by juveniles (e.g., rape, murder, strong-armed robbery), States may simply adopt more restrictive methods for handling the serious juvenile offender.

CHAPTER IV

INDEPENDENT STATE LEGISLATIVE ACTIVITIES

This chapter will discuss independent State legislative activities. The first part of the chapter will examine the most recent changes in juvenile law in a select group of States, which represent efforts to devise specific ways of dealing with the serious juvenile offender. Six States have been selected for initial analysis. They are: (1) California, (2) Colorado, (3) Delaware, (4) Florida, (5) Washington, and (6) New York. These States were selected for discussion because their juvenile statutory provisions are substantially different from the legislation in other jurisdictions, although the dispositions developed by them may spread to other States in the near future despite their controversial nature. Subsequently there will be a general discussion of legislative provisions in other States having to do with jurisdiction, sentencing, and confinement.

CALIFORNIA LEGISLATION

California's attempts to develop dispositions for dealing with serious juvenile offenders have undergone numerous revisions over the years. One provision contained in Section 707 of the California Welfare and Institutions Code has received considerable attention. It provides guidelines for waiving or transferring certain youths to adult criminal court. The nature of the changes in this provision are instructive in the sense that they reflect the change in opinion that California has seen since 1961.

The waiver provision in 1961 permitted minors age 16 or older, charged with the commission of an offense which would constitute a violation of a criminal statute or ordinance, to be subjects of a "fitness" hearing. In this statute, "fitness" refers to the youth's amenability to care, treatment, and training available through the facilities of the juvenile court. If substantial evidence was produced to demonstrate the minor's unfitness at the juvenile court level, then it could direct the District Attorney to prosecute the youth under the appropriate criminal statute in adult court.

In 1975, Section 707 of the Welfare and Institutions Code was substantially revised. The paragraph stating that the offense by itself was not sufficient for a determination of unfitness was deleted and replaced by five specific criteria which the court must take into account to find a minor unfit. They were:

- the degree of criminal sophistication exhibited by the minor;
- whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction;
- the minor's previous delinquent history;
- success of previous attempts by the juvenile court to rehabilitate the minor; and,
- the circumstances and gravity of the offense alleged to have been committed by the minor.

These provisions, by themselves, introduce more specificity into the waiver process and were an attempt by the legislature to reduce arbitrary transfers of youth to adult court. However, the paragraph following the enumeration of the criteria states that fitness can be based on any one or a combination of factors. If anything, these changes make it easier to waive the serious offender to the adult court.

Then, in 1976, Section 707 underwent a drastic revision as part of California Assembly Bill 3121. The content of the 1975 version of Section 707 was codified as subsection (b) was added. Subsection (b) was aimed specifically at the serious offender. It itemized 11 target offenses that would be subject to the new waiver provisions:

- murder
- arson of an inhabited building
- robbery while armed with a dangerous or deadly weapon
- rape with force or violence or threat of great bodily harm
- kidnapping for ransom
- kidnapping for purpose of robbery
- kidnapping with bodily harm
- assault with intent to murder or attempted murder
- assault with a firearm or a destructive device
- assault by any means of force likely to produce great bodily injury
- discharge of a firearm into an inhabited or occupied building.

The effect of enumerating these target offenses is to create a presumption in favor of waiver if the minor is charged with one of the specified 11 crimes. This provision shifts the burden of proof* of fitness to the minor. The burden of proof under subsection (a) is on the petitioner as it is in virtually every State in the country. However, for the minor to rebut or disprove the presumption in subsection (b), the minor must produce evidence on the criteria as enumerated in 1975, i.e., as to criminal sophistication and whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

If the minor is successful in rebutting the presumption, then the case will be retained in juvenile court. If the minor fails to prove that he/she is a fit candidate for treatment, then the case is transferred to adult court for criminal prosecution.

Another important legislative provision, introduced as part of California Assembly Bill 3121 in 1976, has to do with confinement. Under Section 1769 of the California Welfare and Institutions Code, subsection (b) states:

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*In this report, the burden of proof refers to the duty of proving a disputed assertion or charge.

> Every person committed to the Authority by a juvenile court who has been found to be a person described in Section 602 by reason of the violation when such person was 16 years of age or older, of any of the offenses listed in subdivision (b) of Section 707, shall be discharged upon the expiration of a two-year period of control or when the person reaches his or her twenty-third birthday, whichever occurs later...

This provision provides for a mandatory period of control that could last from two to seven years. Although the provision does not require minors to be placed in an institution or training school for this period of time, they may be so placed. As a practical matter, minors committed to the Youth Authority for a serious offense against persons as enumerated under Section 707(b) are the most likely candidates for training school time. Section 707(b) insures that minors who commit serious offenses will receive a minimum of two years of control.

One other California provision in effect since 1941 can be used for dealing with a serious offender, found in Section 1780 of the Welfare and Institutions Code. This permits the California Youth Authority to petition the committing court to transfer the youth to the Adult Authority if discharge from the Youth Authority precedes the expiration of the maximum time of confinement, and the youth is believed to be dangerous to the public. An example would be a minor who was convicted of murder and placed with the Authority. Assuming that the maximum time was life imprisonment, and that the youth spent ages 16 - 23 (seven years) in a Youth Authority Training School, he/she could be transferred to prison if found to be dangerous after a hearing of the allegations upon their merit. Such a provision is a kind of "graduation" provision to State prison for minors believed to be dangerous to the public.

California's detention statute, under Section 628 of the Welfare and Institutions Code, recognizes under sub-part (7) that a minor believed to be physically dangerous may be detained. This concurs with the recommendation of the Juvenile Justice and

Delinquency Prevention Task Force Report of 1976, stating that the preventive detention of juveniles believed to be dangerous is appropriate under certain conditions. This is similar to provisions passed in other States.

California has substantially modified some of its basic disposition procedures, primarily waiver and confinement practices, in order to deal more sternly with the serious offender.

COLORADO: THE CREATION OF NEW JUVENILE OFFENDER CLASSIFICATIONS

In Colorado, the General Assembly during the 1977 legislative session revised the Children's Code (4, Title 19, Supp. 1977) to create two new juvenile offender classifications. These are designed to handle the "repeat juvenile offender" and the "violent juvenile offender."

The repeat juvenile offender classification is defined as:

> ...a child, previously adjudicated a delinquent child, who is adjudicated a delinquent child for an offense which would constitute a felony if committed by an adult or whose probation is revoked for an offense that would constitute a felony if committed by an adult (4, Section 19-01-103(23.5) Supp. 1977).

This repeat juvenile offender classification takes into account the juvenile's prior criminal record and the offense for which the juvenile is presently charged. If the charged youth has previously been adjudicated delinquent for a felony offense like burglary or armed robbery or has had his/her probation revoked for the commission of a felony level offense, then the youth is deemed to be a "repeat" offender. The subsequent offense can be a misdemeanor and the youth still qualify as a "repeat" offender.

Similarly, the violent juvenile offender classification is defined as follows:

> ...a child fifteen years of age or older at the time the act complained of was committed who is adjudicated a delinquent child for a crime of violence as defined in Section

> 16-11-309(2)* Colorado Revised Statutes 1973, or whose probation is revoked for a crime of violence...(4, Section 19-01-103(28) Supp. 1977).

The violent juvenile offender classification, like the repeat offender classification also takes into account the juvenile's previous delinquency history. In this case, however, the statute mandates that the juvenile must have been adjudicated delinquent or probation revoked for a "crime of violence." Here again, the original offense could be for a misdemeanor.

The purpose of these new legislative classifications is to provide a mandatory sentencing policy for youth that fall into one of the new delinquency classifications. Violent offenders, under Colorado law, once adjudicated delinquent "shall be placed or committed out of the home for not less than a year" (4, Section 19-3-113.1(1) Supp. 1977). The same is true for repeat offenders (4, Section 19-3-113.1(2)(b) Supp. 1977).

Institutional placement for juveniles adjudicated as repeat or violent offenders shall be indeterminate; except, that the judge may in his/her discretion impose a minimum sentence of up to two years (4, Section 19-3-114(3)(b) Supp. 1977). For example, a judge may order that a repeat offender adjudicated delinquent for a robbery offense spend a minimum of 18 months in a training school. Under such an order, the juvenile could not be released during the first 18 months, and may be held as long as the total time in the institution is not over two years. Once a minor has been held in custody for two years, then he/she must be transferred to a noninstitutional placement (e.g., community-based camp, aftercare) for the remaining period of time.

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*"Crime of violence" means a crime in which the defendant used or possessed and threatened the use of a deadly weapon during the commission of a crime of murder, first or second degree assault, kidnapping, sexual assault, robbery, first degree arson, first or second degree burglary, escape, or criminal extortion, or during the flight immediate therefrom, or who caused serious bodily injury or death to any person, other than himself or another participant, during the commission of any such felony, or during the immediate flight therefrom.

These new classifications provide for removing juveniles ages 12 to 18 from their homes for a minimum of one year. Such a sentencing provision is modeled after the determinate sentencing laws that have been passed for adults in many States. Such provisions seek to insure that repeat and violent offenders are not simply placed in the custody of their parents, at least until after one year.

The change in Colorado law applies to juveniles under the jurisdiction of the juvenile court. Certain juveniles however, can be waived to the adult court in Colorado as in other States; or they may be excluded from the jurisdiction of the juvenile court by the nature of their offenses.

Waiver is permitted for youths 14 years of age or older who are alleged to have committed a felony, and who have been accorded a probable cause hearing (4, Section 19-3-108 Supp. 1977). For waiver, the court must decide according to Kent type criteria:

- seriousness of the offense;
- whether the offense was committed in an aggressive, violent, or willful manner;
- whether the offense was against the person or property;
- the maturity of the child as determined by home, environment, and emotional attitude;
- record and previous history of the child; and,
- likelihood of rehabilitation.

If probable cause is determined and the petitioner sustains the burden of proof, based on the above criteria, then the youth may be transferred to the adult court for criminal prosecution.

Certain offenses under Colorado law also may be excluded from the jurisdiction of the juvenile court: under circumstances where children 14 or over and charged with a crime of violence which constitutes a Class 1 felony;* children 16 or older who have been adjudicated delinquent within the previous two years for the commission of a felony and are now charged with a Class 2, Class 3, or Nonclassified felony punishable by death or life imprisonment; or children 14 or over charged with the commission of a felony subsequent to an earlier felony charge, over which jurisdiction was waived (4, Section 19-1-103(4)(b) Supp. 1977).

The Colorado Children's Code, previous to the creation of the "repeat" and "violent" offender classifications, could only exclude or waive a select group of serious offenders from the jurisdiction of the juvenile court. Under House Bill 1302, it appears that many serious juvenile offenders will be subject to the mandatory institutional placements. Conceivably, plea bargaining could modify the effect of this new law, but the legislature seems determined to make mandatory sentencing a reality for dealing with the serious offender in Colorado.

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*Felonies are divided into five classes which are distinguished from one another by the following penalties which are authorized upon conviction:

CLASS	OFFENSE INCLUDED	MINIMUM SENTENCE	MAXIMUM SENTENCE
1	e.g., first degree murder	life imprisonment	death
2	e.g., first degree kidnapping	10 years imprisonment	50 years imprisonment
3	e.g., rape, first degree assault, burglary	5 years imprisonment	40 years imprisonment
4	e.g., second degree kidnapping, manslaughter, arson, roberry	1 year imprisonment or $2,000 fine	10 years imprisonment or $30,000 fine, or both
5	e.g., theft	1 year imprisonment or $1,000 fine	5 years imprisonment, $15,000 fine, or both

Colorado Revised Statutes Section 18-1-105 (1973)

DELAWARE: A NEW MANDATORY SENTENCING LAW

The Delaware Legislature also has devised a mandatory sentencing scheme for juveniles. The new provisions for mandatory sentencing are contained in Title 10, Section 937(c) of the Delaware Code Annotated.

Two of the subdivisions under Section 937(c) provide for mandatory custody of juveniles for a one year period. The first subdivision, cited as Section 937(c)(1), provides that any minor that is "adjudicated delinquent once for committing separate and distinct acts, not arising from the same transaction within any one-year period" will receive a one year mandatory term. This subdivision is further qualified to specify that the separate and distinct acts refer to two felony offenses under Chapter Five, or any two burglaries. The language used in this statutory section is confusing and needs some explanation, particularly the phrase "separate and distinct acts, not arising from the same transaction." This phrase means that the delinquent acts must be separated in time and not have occurred as a result of one series of actions. For example, a juvenile may commit an offense of rape which results in death. Though both rape and some type of homicide have occurred, both offenses arose from the same action or transaction. However, the juvenile that burglarizes an apartment to steal a television, and then assaults someone a month later, would theoretically be subject to the provisions of this statute, if adjudicated delinquent.

The other subdivision which mandates one year custody is cited as Section 937(c)(3). Under this provision, a minor adjudicated delinquent once or more for separate acts (that would be counted as three offenses if an adult were charged) within any one year period shall be sentenced to one year of custody.

A third subdivision under this section, cited as Section 937(c)(2), provides that any minor adjudicated delinquent once or more and who commits three separate felony acts within any three year period will be subject to a three year mandatory custody term. This provision and the other two discussed above are phrased much like habitual offender laws for adults. The greater the number of offenses and the more serious they are, the longer the mandatory term.

Subdivision (4) under Section 937(c) provides an additional six months of custody time to the juvenile's institutional commitment if he/she commits an offense which would be an escape if committed by an adult. Similarly, a juvenile that has been committed to an institution, who escapes or violates leave of absence rules, and who commits a felony shall be subject to a three year custody addition. In this latter case, prior to returning the juvenile to an institution for reason of the alleged commission of a felony and escape, an amenability hearing* will be held to see if the youth should be tried in adult court. Assuming the court finds the youth amenable to further treatment, then the juvenile will be returned to custody and will face an additional three years in the juvenile institution.

One final provision of interest under Section 937(c) is subdivision (6), which permits the Family Court judge to suspend all but six months of any mandatory sentence under subdivisions (1) through (5) if it can be shown by a preponderance of the evidence that a lesser period of committment would: (a) best serve the needs of the child, or (b) pose no probable threat to property or persons upon earlier release. This provision mitigates the effect of the mandatory terms discussed above, just as subdivisions (4) and (5) aggravate the term.

Other ways for handling serious offenders under Delaware law either exclude certain offenses from the jurisdiction of the Family Court, or make provision for the waiver/transfer of certain juveniles. Three offenses (murder, rape, and kidnapping) are excluded from Family Court jurisdiction and must be tried in the adult court if the child is over 16 years of age. For juveniles charged with the commission of other felonies, an amenability hearing must be held to determine if jurisdiction will be waived. Some of the factors taken into account are:

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*In this report, an amenability hearing refers to a hearing in the Family Court to determine if a juvenile is a suitable subject for treatment under Family Court Law. This hearing was referred to earlier as a "fitness" hearing in California.

- age of child, characteristics, and the interest of society;
- whether it is alleged that death or serious injury resulted;
- whether the child was convicted of a prior criminal offense;
- whether child has been subject to previous correctional treatment of the Family Court;
- whether it is alleged that the child used a dangerous instrument; and,
- whether participants in the same offense are being tried as adult offenders (7, Section 10-938(c)(1-6) Supp. 1977).

The criteria listed above are not substantially different from those listed for California and Colorado. Such criteria encourage the Family Court to be discrete in transferring juveniles to adult court. This is accomplished primarily by focusing the attention on the criminal behavior criteria, whether a dangerous instrument was used or if death/serious injury resulted. After weighing the evidence presented, if the child is deemed amenable to treatment, then the Family Court will hear the case; if not, then the case may be transferred to the Superior Court for criminal prosectuion.

Delaware's revision of its Family Court Act occurred in the 1976-77 legislative session and it added mandatory sentencing provisions for dealing with serious offenders. This, coupled with the jurisdictional provisions just discussed, broadens the range of punishment and narrows the rehabilitative policy in existence prior to the passage of the Family Court Act of 1977.

FLORIDA: THE FLORIDA JUVENILE JUSTICE ACT

Some of the most sweeping changes in juvenile law have occurred in Florida in recent years. One of these relates to the jurisdiction of the juvenile court. In 1974, most children were subject to the jurisdiction of the juvenile court, unless a child was charged with a crime punishable by death and the grand jury had returned an indictment (8, Section 39.02(c) Supp. 1974). In this case, the child would be tried as an adult. All other children alleged to have committed violations of law were subject to juvenile court proceedings. In cases where the child was 14 or older, he could be waived to adult court where there was probable cause to believe the child committed the offense, and the prospect for rehabilitation was poor (8, Section 39.03(2)(a) Supp. 1976).

In 1975-76 the waiver/transfer provision was amended to make a hearing mandatory where the child had previously been adjudicated delinquent for one of the following violent crimes: murder, rape or sexual battery, armed robbery or aggravated assault, and was currently charged with a second or subsequent offense (8, Section 39.09(a) Supp. 1976). The court was directed by subdivision (c) of Section 39.09(2) to take into account the following factors:

- seriousness of the offense and whether community protection requires waiver;
- whether the alleged offense was against the person or property, with greater weight given to offenses against the person, especially if personal injury results;
- prosecutive merit of the complaint;
- desirability of a trial and disposition of the entire offense in one court, when the juvenile's associates are adults;
- sophistication and maturity of the juvenile, as determined by the home, environmental situation, emotional attitude, and pattern of living;
- record and previous history of the juvenile; and
- prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile.

The criteria specified above are almost identical with those specified in the Kent case (see Chapter I). The only factor omitted was whether the act was committed in an aggressive, violent, premeditated, or willful manner. Despite this, the mandatory hearing toughens the law, making it potentially more severe on juveniles that commit such acts.

Then, in the 1977-78 legislative session, the waiver provision was amended slightly to clarify some of the provisions passed in the 1975-76 session. These include (1) change of target crimes to violent crimes against the person; (2) rape was deleted, while strong-armed robbery and aggravated battery were added. Rape was deleted because it is included as one of a group of offenses known as sexual battery.* To itemize rape would be redundant.

The essential provisions related to detaining serious offenders, stated simply that the child could be detained: (1) to protect person or property, (2) if there was no parent, and (3) to secure the juvenile's presence at a hearing (8, Section 39.111 (6)(d) Supp. 1978). Later in the 1977-78 session, a new provision was added (Section 39.032) to expand the grounds for detention. The provision now states that detention can be used:

- to protect the person/property of others or the child,
- because the child has no parent,
- to secure presence at the next hearing,
- because the child has been twice previously adjudicated delinquent and is charged with a third delinquent act, and
- to hold the child for another jurisdiction.

This change may make detention easier than before, despite the fact that there is a general presumption against holding the juvenile.

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*"Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by an object; however, sexual battery shall not include acts done for bona fide medical purposes. Florida Statutes Annotated Section 794.011(1)(f)(1978).

There has been little change in legislative provisions relating to the confinement of the juvenile since 1974. The juvenile court retains jurisdiction over the case. Prior to 1974 the law provided under Section 39.11(3)(c) that a juvenile could be held for an indeterminate term not to exceed the youth's twenty-first birthday. In the 1977-78 legislative session, the maximum age requirement for continuing jurisdiction was lowered to 19. This change may represent a further toughening of the law in Florida. Juveniles who are serving time in a juvenile institution may have an adjudication of delinquency revoked by the committing court if a youth is deemed not suitable for treatment. The juvenile may then be classified as a youthful offender (8, Section 39.111 (5)(b) Supp. 1978). If this occurs, he may be given an adult sentence, with credit for time served. In this way, lowering the age of continuing jurisdiction may result in youths who commit serious delinquent acts being treated as adults.

In addition, for juveniles who are waived to the adult court, a new provision requires a determination as to whether an adult sanction should be imposed by the court (8, Section 39.111 (6)(d) Supp. 1978). A list of criteria, identical with those used to determine waiver, is used to decide if the juvenile will be so sentenced and placed in a youthful offender facility. This confinement provision exceeds the Colorado sentencing law which permits mandatory institutional terms of up to two years. The new Florida provision is even harsher than the California provision under which a youth may be kept until age 23 for an adjudication of an offense like robbery or assault. The Florida law allows the youth to be sentenced after adjudication as an adult.

WASHINGTON: A NEW MANDATORY SENTENCING LAW

The juvenile code for the State of Washington had never been very specific with regard to dispositions for dealing with serious offenders. This, however, changed dramatically with the passage of the Juvenile Justice Act of 1977 (effective July 1, 1978), by the legislature sitting in extraordinary session. This created a mandatory sentencing policy requiring juveniles ages 8 - 17 who are adjudicated delinquent, to be confined in an institution for a minimum term.

One of the interesting aspects of the Act in question is the statement of legislative intent absent in many State codes. The section, in its pertinent part, states:

> It is the intent of the legislature that a system be developed capable of having primary responsibility for being accountable for, and responding to the needs of youthful offenders. It is the further intent of the legislature that youth, in turn, be held accountable for their offenses and that both communities and juvenile courts carry out their function consistent with this intent (18, Section 13.40.010(2) Supp. 1978).

In another part of the Act there is specific mention of the intent to make juveniles accountable for criminal behavior and to provide for punishment commensurate with the age, crime, and criminal history of the offender.

Consistent with this intent is a formal instrument (scoring sheet) used to determine how long an adjudicated youth must spend in confinement, based on the juvenile's age, current offense, and criminal history. Figure 1 shows the method for computing a score of each adjudicated youth. To compute a score for a juvenile, first the offense type and the age of the juvenile are plotted on the grid on the left side of Figure 1. As an example, assume that the offense type is Class A* and that the juvenile

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*Offense class and crime types for the State of Washington are correlated as follows:

Offense Class	Offense Type (Examples)
A+	Assault 1
A	Arson 1, Rape 1
B+	Assault 2, Burglary 1, Rape 2, Robbery 2
B	Arson 2, Burglary 2
C+	Assault 3, Manslaughter 2, Rape 3
C	Escape 2, Forgery, Theft 2
GH+	Assault, simple
GH	Criminal trespass
M/V	Disorderly Conduct, Malicious Mischief 3

Revised Code of Washington Annotated Title 9A Sections 1-91 (1977)

Figure 1

ADJUDICATED OFFENDER CONFINEMENT SCORING SHEET:
STATE OF WASHINGTON

	AGE			CURRENT OFFENSE(S)			TIME		CRIMINAL HISTORY			
CLASS	17	16	15	14	13	12	CLASS SPAN	0-6	6-12	12+	.MORE	
A+	400	350	300	300	250	250	A+	.9	.8	.7		
A	300	300	250	250	225	200	A	.9	.8	.6		
B+	150	140	120	110	110	110	B+	.9	.7	.4		
B	54	52	50	48	46	44	B	.9	.6	.3		
C+	42	40	38	36	34	32	C+	.5	.3	.2		
C	30	28	26	24	22	20	C	.4	.3	.2		
GH+	26	24	22	20	18	16	GH+	.3	.2	.1		
GH	24	22	20	18	16	14	GH	.2	.1	.1		
M&V	10	8	6	4	4	4	M&V	.1	.1	.1		

is age 15. Based on this, the initial score would be 250 points. Then, the 250 point total is multiplied by weighting factor, based on the juvenile's prior criminal record. Here again, assuming that the criminal history was 12+ (i.e., over 12 months since last delinquent involvement) one would multiply 250 points by 1.6 (1.0+.6) to determine the enhanced point total. This score comes to a value of 400, and is then plotted on the grid in Figure 2. The appropriate intersection on the grid indicates that the youth would be sentenced to confinement for 40-50 months in an institution; with an 18 month maximum parole. This method of computing a sentence is similar to techniques used for sentencing adults in other States. Obviously this method, which was established by the Bureau of Juvenile Rehabilitation, in conjunction with other criminal justice personnel in the State, delegates discretion to juvenile justice system personnel, rather than having mandatory terms set by the legislature.

Figure 2

ADJUDICATED OFFENDER SENTENCE GRID:
STATE OF WASHINGTON

POINTS	COMMUNITY SERVICE HOURS, SUPERVISION AND FINE	CONFINE. OR PARTIAL CONF	CONFINEMENT TIME	TIME ON PAROLE
1-9	5-25 & max. 3 mo. & max. $25			
10-19	20-35 & max. 3 mo. & max. $25			
20-29	30-45 & max. 6 mo. & max. $50			
30-39	40-65 & max. 6 mo. & max. $50			
40-49	50-75 & max. 6 mo. & max. $75			
50-59	60-90 & max. 9 mo. & max. $75	and 1-2*		
60-69	70-100 & max. 9 mo. & max. $75	and 3-6*		
70-79	80-110 & max. 1 yr. & max. $100	and 7-14*		
80-89	90-130 & max. 1 yr. & max. $100	and 10-20*		
90-109	100-150 & max. 1 yr. & max. $100	and 15-30*		
110-119			60-90 days	max. 4 mo.
120-129			13-16 weeks	max. 4 mo.
130-139			15-20 weeks	max. 6 mo.
140-149			21-28 weeks	max. 6 mo.
150-169			30-40 weeks	max. 8 mo.
170-199			38-52 weeks	max. 8 mo.
200-229			12-15 mo.	max. 12 mo.
230-269			16-20 mo.	max. 12 mo.
270-309			20-25 mo. (2 yr.)	max 12. mo.
310-349			24-30 mo.	max. 18 mo.
350-399			32-40 mo. (3 yr.)	max. 18 mo.
400 or OVER			40-50 mo.	max. 18 mo.

* If minor or first offender detention time will not be served

The enabling legislation, for the sentencing standards just discussed, is contained in the Revised Code of Washington Annotated Section 13.040.030. It qualifies the use of the sentencing standards to the extent that it requires that the minimum term of confinement over one year be no less than 80 percent of the maximum; minimum terms between 90 days and one year shall be no less than 75 percent of the maximum; and the minimum for terms of 90 days shall be no less than 50 percent of the maximum. These restrictions prevent the juvenile court from assigning minimum sentences to juveniles and mandate confinement, when confinement is a sentencing option.

Prior to the passage of the Juvenile Justice Act of 1977, confinement practices were indeterminate and allowed the juvenile court to confine or not confine, as they wished. The introduction of mandatory sentencing standardizes juvenile sentencing procedures and reduces disparity in length of sentences. This may not be enacted in all States, as it conflicts with one of the basic tenets of juvenile court philosophy which has long stressed individualized treatment.

Legislative changes were also made in detention. Previously there was little recognition of the need to detain dangerous youth. Under Section 13.40.040 detention is permitted when:

- youth alleged to have committed an offense while on community supervision or the youth's statements give reason to believe that:
    - the youth will fail to appear
    - the youth is dangerous to self or others
    - the court has ordered detention as material witness
    - the youth is a fugitive
    - early release has been suspended by the Secretary of the Department of Social and Health Services
    - there is clear and convincing evidence that the youth is dangerous
    - the youth will seek to intimidate witnesses.

Waiver proceedings in the State of Washington remained largely unchanged. Any juvenile between the age of 8 and 17 who is alleged to have committed a violation of the law can be transferred for criminal prosecution. In practice, waivers seldom occur in Washington for youths under a certain age (e.g., 14 or 15) or for youths who do not commit felonies. But such a practice has not been codified and any youth within the age range is a potential candidate for waiver. Youths age 16 or older, on the other hand, who are alleged to have committed murder must undergo a waiver proceeding, unless the right to a hearing is waived by: (1) the court, or (2) the parties and their counsel. Similarly, youths who are aged 17 and are alleged to have committed assault in the second degree, extortion in the first degree, indecent liberties, kidnapping in the second degree, rape in the second degree, or robbery in the second degree must face a waiver hearing unless the right itself is waived (18, Section 13.40.110 Supp. 1978).

NEW YORK: THE NEW JUVENILE OFFENDER LAW

The State of New York has enacted a series of changes to its Family Court Act within the past few years. The primary changes of interest in this paper are those which deal with the serious offender, one alleged to have committed certain targeted felony offenses. A classification, introduced in 1976, is the "designated felony" which prescribes treatment options for adjudicated youth within the juvenile justice system; whereas, the second classification, the "juvenile offender,"excludes certain offenses from the jurisdiction of the Family Court (effective September 1, 1978).

New York legislation for dealing with juveniles who are alleged to have committed violations of law are unique. The initial premise in New York law with regard to jurisdiction is that persons age 16 and over are adults for the purposes of criminal prosecution. This limits the number of youth offenders that can be considered juveniles. One of the new juvenile law provisions restricts this further so that youths 13-15 can now be excluded, under certain circumstances, from the jurisdiction of the Family Court.

One of the most important facets of New York law has been a distinction made among juvenile delinquents based on age and the type of offense. This distinction, fostered by the Juvenile Justice Reform Act of 1976 created a "designated felony act" for juveniles age 14 and 15. The crimes identified in this section were:

- murder (first degree)
- murder (second degree)
- kidnapping (first degree)
- arson (first degree)
- assault (first degree)
- manslaughter (first degree)
- rape (first degree)
- sodomy (first degree)
- kidnapping (second degree); if deadly force threatened
- arson (second degree)
- robbery (first degree) (6, Section 712(b) Supp. 1976).

Juveniles charged with one of the crimes listed above must be heard by a special division of the Family Court created to hear "designated felony" cases. If adjudicated delinquent on charges of murder (first degree), murder (second degree), arson (first degree), or kidnapping (first degree), the judge had a choice of imposing a sentence for a 5 year restrictive placement which could be renewed annually until the youth reached 21 years of age; or if appropriate, the youth could be given a standard 18 month placement, as other juveniles would receive outside of this "designated felony" category. For the remainder of the offenses listed above (e.g., assault, manslaughter), the judge could impose a three year restrictive placement on the adjudicated delinquent, with the same option to renew the term annually.

In the 1978 amendment to the Act, the "designated felony" section was amended to include 13-year-old offenders for whom the restrictive placement option becomes possible.

The criteria for restrictive placement, contained in Section 753-a(2) are:

- needs and best interest of the respondent
- record and background
- nature and circumstances of the offense
- need for protection of the community
- age and physical condition of the victim.

These factors must be weighed in deciding to impose a restrictive placement, except where a designated felony act was committed and injury was inflicted on a person 62 years of age or older (6, Section 753-a(2)(a) Supp. 1978). If restrictive placement is imposed, then the five year minimum sentence for the first group of crimes discussed above (e.g., murder) applies, with a minimum of 12 months and a maximum of 18 months in a secure facility.

The most sweeping change in New York law, mentioned at the beginning of this chapter, is the creation of a "juvenile offender" provision. This requires that 14- and 15-year-olds, alleged to have committed the most serious and violent felonies, plus 13-year-olds alleged to have committed murder in the first or second degree, be automatically sent to the adult criminal courts for trial. Also, juveniles convicted under this new juvenile offender designation are subject to prison sentences similar in length to those given adults (24, pp. 1 and 2). Figure 3 lists one group of crimes which fall into the "juvenile offender" designation and the possible maximum sentences (15, Section 70.05(2) and (3) Supp. 1978).

Figure 3

SERIOUS JUVENILE OFFENSE MAXIMUM SENTENCE REQUIREMENTS
STATE OF NEW YORK

Offense	Sentence
Class A Felony (Murder)	Life Imprisonment
Class A Felony (Arson; Kidnapping - First Degree)	Not to exceed 15 years
Class B Felony (e.g., Kidnapping - Second Degree)	Not to exceed 10 years
Class C Felony (e.g., Assault - First Degree)	Not to exceed 5 years

The "juvenile offender" provision effectively excludes the felony offenses listed in Figure 3 from the Family Court jurisdiction. Under certain circumstances, i.e., in the interest of justice, waiver provision provided under Section 180.75 of the New York Penal Law permits a juvenile to be removed to Family Court except in cases of first or second degree murder or an armed felony. Successful removal of the case to Family Court could result in the juvenile being handled more leniently under the "designated felony" provision of the Juvenile Justice Reform Act.

Factors to be taken into account in deciding whether to remove the case to Family Court are:

- mitigating circumstances bearing directly on the way the crime was committed
- case where defendant was not the sole participant in the crime, and the defendant played a minor role
- possible deficiencies in proof.

Should the "juvenile offender" (age 13-15) be convicted in criminal court, the sentence imposed may be served in the Division for Youth until the youth reaches the age of 21. However, youths 16-18 can be placed in a youthful offender facility, if it can be shown that there is no substantial likelihood that the youth will benefit from commitment to Division for Youth Services (24, p. 7).

The major changes in New York law are:

- the original jurisdiction of the adult court has been expanded to include persons age 14 and 15 for a large group of felony offenses,
- 13-year-olds may be included for the alleged commission of second degree murder.

These legislative changes make no pretense of treating these individuals as juveniles since they do not include waiver hearings as a procedure. Instead, such youth become immediate subjects for criminal prosecution.

One of the striking effects of this change in the New York law is that the new "juvenile offender" provision undermines the purpose of the "designated felony act" passed in 1976. Under that act, it was thought that the harsh effects of a rigid, mandatory sentencing scheme could be avoided. However, rather than avoiding more rigid treatment for youth, now the only persons who are subject to the "designated felony act" are youths age 13 and under (unless second degree murder is alleged for a 13-year-old), or if a case is removed from the criminal court by way of a reverse waiver proceeding. The punishment accorded the "juvenile offender" represents an increase in the rigidity, and the potential for greater punishment for youth in the State of New York.

OTHER STATE LEGISLATION

In addition to the six States so far discussed, an additional group of States have introduced single provisions bearing on serious juvenile offenders. For example, in Alabama, though the maximum age for juvenile court original jurisdiction now is 18, in 1975 it was 16; once this age was reached a youth could be tried as an adult. In 1977, the age was raised to 17, then in 1978 it became 18 (1, Section 13A-5 Supp. 1975). This trend runs contrary to that in most States which are taking steps to lower the age for criminal liability. However, it was learned recently from the Alabama Division of Youth Services that there is a bill pending before the next Alabama legislative session to lower the maximum age once again to 16 years.

As noted in other States, recent legislative changes have increased the relative ease with which juveniles can be tried as adults. In the State of New Jersey, for example, the age at which a waiver may be considered was lowered from 16 to 14 on February 1, 1977 (15, Section 2A: 4-48(a) Supp. 1978). This represents a conscious attempt by the State Legislators to attack the problem of serious juvenile crime. Similarly, in the States of Louisiana (14, Section 3-1571.1(a) Supp. 1978), South Carolina (2, Section 15.1095.9(d) Supp. 1975), and Tennessee (19, Section 37-234(a)(1) Supp. 1977), "target" offenses are now used as a primary criterion for waiver. Among these are:

- murder
- rape
- robbery
- manslaughter
- kidnapping
- aggravated assault.

If a juvenile is accused of a "target crime" in Louisiana and South Carolina a waiver hearing can be held and the youth transferred to criminal court. Similarly, in Tennessee, being charged with one of the specified target crimes lowers the general waiver age from 16 to 15 years, resulting in a hearing to determine if a transfer to adult court should be made.

In regard to sentencing and confinement: Connecticut (5, Section 17-69 Supp. 1977) and Pennsylvania (17, Section 11-50-325 (4)(iip) Supp. 1978) have established two and three year maximum terms respectively for juvenile confinement. These are types of quasi-determinate sentences, since institutionalization cannot exceed a stated maximum term. Subsequent to the expiration of the maximum term, the case must be re-evaluated if the juvenile is to be held longer. This differs significantly from most State confinement provisions which are almost exclusively indeterminate in nature, with no stated maximum term except the age of majority. These provisions are similar, however, to the Colorado mandatory sentencing provisions discussed earlier in this chapter which permit a two year institutional term.

Other confinement provisions are found in special agreements of the interstate juvenile compact of certain States. For example, five smaller western States (Alaska, Arizona, Idaho, Nevada, and Utah) have agreements with the California Youth Authority to place certain serious juvenile offenders in California institutions. These agreements permit the contracting State to request a transfer to California of any offender whom the contracting State considers to be unfit for treatment in its juvenile programs and services. Referral requires court documents and probation materials (e.g., social histories) be sent to Youth Authority officials for review. If the child is accepted for placement, then he or she is sent for processing to one of the Youth Authority Reception Centers in Northern or Southern California. Spokesmen from the various contracting States have indicated that the arrangement with California is extremely fortunate, especially because of the expense otherwise required to create special facilities for the small number of juveniles in need of them. At the present time, there are a total of only about eight youths from these States housed in Youth Authority institutions.

The State of Virginia has an unusual sentencing provision which provides that a juvenile can be sentenced as an adult if:

- over 15 years of age
- charged with an offense that would be a misdemeanor or a felony if committed by an adult
- court finds juvenile to be:
  - not amenable to treatment
  - interests of community require child to be placed under legal restraint (3, Section 16.1-284(i) and (ii) Supp. 1978).

These provisions, though not further specified in the code, indicate that these youths who are not proper subjects for treatment in Virginia juvenile facilities should be handled by the State Department of Corrections instead. This provision resembles those in Florida and California which permit institutionalization.

SUMMARY

The independent State legislative activities that have been described in this chapter depart from the deinstitutionalization recommendations at the Federal level. To indicate the degree to which this is true, it will help to rank-order the legislative provisions of each State in light of their potential severity of punishment.

Perhaps the most unusual, most punitive, and most incontroversial of the provisions are those passed by New York, namely, the "juvenile offender" law which: (1) excludes a group of target crimes from juvenile court jurisdiction for youth down to age 13; (2) a low maximum age for original jurisdiction of 16; and (3) adjudication on a "designated felony" provision in Family Court which can result in a 3-5 year restrictive placement for youth still deemed to be juveniles. These distinctions change the whole focus of juvenile rehabilitation, at least for youth under 16 in the State.

The second most punitive set of provisions for handling juveniles is California. Contained within Section 707(b) of the California Welfare and Institutions Code is a provision for a mandatory waiver hearing for juveniles who commit one of the specified target crimes, with a presumption that the child will be waived to adult court unless it is successfully rebutted with evidence that the juvenile is a proper subject for treatment under the juvenile court.

Florida is next most punitive, having passed legislative provisions calling for a mandatory waiver hearing where a target crime is alleged, or where the juvenile has previously been adjudicated delinquent. In addition, once a juvenile is waived to adult court, if he/she is convicted, then the court must consider the appropriateness of an adult sanction.

The final three States (Colorado, Delaware, and Washington) all rank about the same in terms of the severity of punishment for juveniles. Each State has passed a mandatory sentencing law which requires that the juvenile court, upon an adjudication of delinquency, sentence the juvenile to an out-of-home, or institutional, placement for a minimum of one year. These changes introduce determinate sentencing for juveniles, a practice previously avoided by States.

One caveat needs to be entered in this rank ordering of State legislative activites affecting the serious juvenile offender: the legislation described and summarized here is new. There is little information available as yet regarding what will happen when these laws are implemented. How many youths under the age of 15, for example, will be charged with "designated felonies?" How will plea bargaining affect the process? Until these and other questions are answered, it is too soon to predict what impact these statutes will have.

CHAPTER V

RECENT LEGISLATION THAT FAILED IN THE STATES

In addition to the State activity which has resulted in the passage of legislation to create new dispositions for serious offenders, there were significant efforts to do the same in Kentucky and Illinois which failed. Kentucky passed a bill which would have drastically changed its juvenile law but the Governor vetoed it. The Illinois Legislature considered four separate bills, but each met legislative defeat. The two subsections below highlight the proposals in each State, and show how they compare with the respective current statutory law.

KENTUCKY LEGISLATION

The current juvenile law in Kentucky for dealing with serious offenders is largely limited to a waiver/transfer. For children under 16 who are alleged to have committed a Class A felony* or a capital offense, a waiver hearing may be held to determine if the case should be transferred to the adult court. For children over the age of 16, a waiver hearing is permitted for the alleged commission of any felony (13, Section 208.170(1) Supp. 1977).

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*Offense classes, the requisite punishments, and offense types are as follows:

Offense Class	Minimum Term		Maximum Term	Offense Type (Examples)
A	20 years	-	+	Murder
B	10 years	-	20 years	Assault 1, Rape 1
C	5 years	-	10 years	Arson 2, Robbery 2
D	1 year	-	5 years	Rape 3, Theft

Kentucky Revised Statutes, Section 532.020(1)(a-d)(1978)

The waiver considerations utilized in deciding whether to transfer the youth are:

- whether probable cause exists;
- best interest of the child and community based on the seriousness of the offense;
- an offense against the person (greater weight) or a property offense;
- maturity of the child;
- prior record;
- prospects for adequate protection of the public; and,
- likelihood of rehabilitation through the use of the juvenile facilities available (13, Section 208.170(2) Supp. 1977).

These waiver criteria incorporate many of the due process criteria recommended in the Kent case. When they are compared to most other States, there is not much difference.

In addition to the waiver provision, Kentucky has a confinement provision for juveniles who are transferred to adult court and subsequently convicted. The provision states that such juveniles may be committed to the juvenile department until their sentence expires or they reach 21 years of age, whichever occurs first. If the sentence goes beyond the juvenile's twenty-first birthday, then he/she may be transferred to the Bureau of Corrections, at age 21, to serve the remainder of the term.

The recommended changes in the Kentucky legislation during the 1978 regular session would have amended these provisions substantially. For example, they would make waiver mandatory for: (1) juveniles 14 years of age or older who are alleged to have committed a Class A felony*, or a Class B felony; and (2) any person charged with a Class C or Class D felony who has previously been committed to the Department pursuant to Section 3 of this Act (9, Sections 1, 2, and 4, pp. 1 and 2).

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*See footnote on page 63.

Any person meeting the above criteria, after probable cause has been established, would be presumed subject to the jurisdiction of the adult court if the following additional criteria are met: (a) a serious injury was inflicted, (b) there is a recent history of having been adjudicated delinquent of a felony offense, (c) juvenile has failed to comply with a dispositional order, or (d) the juvenile is the leader of a criminal enterprise including himself and two or more persons (9, Section 5, pp. 2 and 3). In order to avoid being tried as an adult, the juvenile has to rebut the presumption with evidence negating points (a) through (d).

This mandatory waiver provision is very similar to the provision passed in California in 1976 contained in Section 707 (b) of the California Welfare and Institutions Code. One slight difference in the provision proposed in Kentucky as compared to California is that the presumption in favor of the case being subject to the jurisdiction of the adult court does not arise from the commission of a "target" offense by itself. Rather, there must be additional evidence shown to support the presumption of serious injury.

These changes in the policy regarding waiver of a youth to adult court would have shifted the burden of proof to the juvenile as it now does in California. Such a provision would enhance the likelihood of trial for serious and repeat offenders in adult court, since the juvenile's characteristics would relieve the State of the burden of a justifying waiver.

Juveniles who would have been waived to adult court under the proposed Kentucky statute were scheduled to be labelled youthful offenders. As youthful offenders, they would have faced confinement provisions much the same as provided for under present day law. Upon reaching the age of 18 (instead of 21) with an unexpired sentence, the youth would be returned to the sentencing court to determine if the youth should be committed to the Bureau of Corrections to serve out the remainder of the sentence (9, Section 11, pp. 17 and 18).

One other aborted legislative proposal, for handling youth within the juvenile justice system, would have introduced 12 month determinate sentences. This sentencing procedure would have applied to youths 16 years or older, adjudicated delinquent for a Class C* or Class D felony, who on two prior occasions had been adjudicated delinquent for a felony offense (9, Section 3, p. 2). This provision is very similar to the "repeat offender" classification passed in Colorado in 1977 where youths could receive up to two years in an institution if they had previously been adjudicated delinquent for a felony level offense. Such provisions seem to be modeled after adult legislation passed in other States in recent years.

As stated earlier, this particular bill passed, but was vetoed by the Governor.

ILLINOIS LEGISLATION

In Illinois, during the 1978 legislative session, there was a flurry of activity to try to amend the law as it relates to juveniles. Several of these bills sought to amend the stated conditions under which a youth could be prosecuted as an adult.

The law as it currently stands today in Illinois is quite straightforward. The procedure for dealing with the serious offender, as in most States, is a waiver hearing. The main requirements for waiver in Illinois provide that: (1) the youth must be 13 or older at the time the offense is alleged to have been committed and (2) it must be shown that it is not in the best interest of the minor, or the public, to proceed under the Juvenile Court Act. The complete criteria for deciding whether to waive a youth are as follows:

- sufficient evidence upon which to base a grand jury indictment

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*See footnote on page 61.

- if offense was committed in an aggressive and premeditated manner
- age of minor
- previous history of minor
- facilities available to juvenile court for rehabilitation and treatment
- best interest of minor and the security of the public (10, Section 37-702-7(3) Supp. 1978).

The proposed legislation of the last session was intended to amend those parts of the Illinois Annotated Statutes (Section 37-702-7) just discussed. The first bill, introduced in February 1977 (House Bill 461) proposed that the maximum age for original jurisdiction over juveniles be lowered from age 17 to age 14. This change would have meant that persons age 14 or older would be tried as adults for all charged offenses. If this had succeeded, Illinois would have had the lowest age of criminal liability in the country. In years past, some States had ages as low as 13 for the maximum juvenile age. However, in recent years New York, Connecticut, and Vermont have established a maximum age of 16 for juvenile/family court jurisdiction.

The second bill, introduced in October 1977 (House Bill 3) provided that certain minors over the age of 13 would be subject to a mandatory waiver proceeding. The class of juvenile offenders that would have been affected by this bill were those alleged to have committed: murder, armed violence, armed robbery, or aggravated arson. A juvenile so charged would be presumed waived to the adult court, unless the minor could show that the case should properly be handled in the juvenile court. This mandatory waiver provision resembled the provisions discussed above in California, Florida, and Kentucky in that the commission of a certain type of offense is sufficient grounds for a mandatory hearing.

The last bills go back to October and November 1974 (House Bill 24 and House Bill 2546). With slight differences they would have excluded certain offenses from the jurisdiction of the juvenile court for children age 13 and over: murder, voluntary manslaughter, armed robbery, reckless homicide, rape, deviate sexual assault, or aggravated kidnapping. The bills also provided for criminal prosecution of juveniles over the age of 13, who are alleged to have committed a felony, and who had been convicted or adjudicated delinquent for the commission previously of two or more felonies. The sections of these bills excluding certain offenses from the jurisdiction of the juvenile court for youth over age 13, were similar to the "juvenile offender" provision in Section 70.05(2) of the New York State Penal Law.

SUMMARY

The bills introduced in Kentucky and Illinois appear to be indicative of a new trend in the juvenile justice field to "get tough" on the serious or violent offender. The trend in these States is very similar to those discussed in Chapter IV of this paper. The reasons for this trend are not clear, although informants in both States have linked it in part to an increase in sensational, violent crimes. The fate of future attempts to pass such legislation in Illinois and Kentucky is unclear, although there is sentiment in both States to introduce more "get tough" bills at the next legislative session.

CHAPTER VI

LEGISLATION PENDING OR NOT YET IN EFFECT IN THE STATES

Unfortunately, it was impossible to learn very much about serious juvenile offender legislation to be considered in legislative sessions in early 1979. Virtually every State contacted was studying various proposed bills on this matter still in committee; hence the legislation was not available for review or analysis. This was true in every State, except Indiana, which passed a new Juvenile Code in September of 1977, which is scheduled to take effect in October of 1979.

The present law in Indiana has a waiver provision which permits transfer to criminal court for any youth, age 14 or over, who is alleged to have committed a felony. Also, there is a mandatory waiver provision for youth age 16 and over charged with one of the following crimes:

- first or second degree murder
- voluntary manslaughter
- kidnapping
- rape
- malicious mayhem
- robbery (11, Section 31-5-7-14a, Supp. 1976).

This provision will change in 1979 to include the following waiver criteria:

- child charged with a heinous or aggravated act
- part of a repetitious pattern of delinquent acts
- child is 14 years or older
- there is probable cause
- child is beyond rehabilitation
- best interest of State or child (11, Section 31-6-2-4(1), effective October 1979).

These criteria are almost identical to the ones recommended by the Juvenile Justice and Delinquency Prevention Task Force of 1976. Criteria of this type are very stringent and discourage waiver to adult court, unless factors can be shown to prove that the offense was heinous in nature or part of a repetitious pattern of delinquent acts. The mandatory waiver aspect of the Indiana legislative provision is consistent with the trend in the States such as California, Florida, Kentucky, and Illinois. Though Indiana is very concerned that the due process rights of juveniles be observed, apparently there is pressure for action against juveniles with serious delinquent offenses.

CHAPTER VII

SUMMARY AND CONCLUSIONS

This paper has examined the juvenile law in all 50 States and the District of Columbia to see what new procedures have been created to deal with the serious juvenile offender.

The frame of reference for discussion was the various Federal actions to provide policy direction for the States on handling juveniles. These Federal efforts were examined to extract their intent and guidelines for the handling and disposition of serious offenders.

The Federal efforts examined were:

- The President's Commission on Law Enforcement and the Administration of Justice - 1967;
- The National Advisory Commission on Criminal Justice Standards and Goals - 1973;
- The Juvenile Justice and Delinquency Prevention Act of 1974 as amended in 1977; and,
- The Juvenile Justice and Delinquency Prevention Task Force - 1976.

A review of these disclosed that Federal guidance was primarily directed at setting due process standards for the waiver of certain juveniles to adult court for criminal prosecution, setting some minimum standards for determining the circumstances under which juveniles should be detained; and establishing guidelines for confinement.

The Federal recommendation to the States on waiver was that a juvenile should be at least 16 years of age, that there be a hearing to determine that probable cause exists to believe that the juvenile committed the alleged offense, and that there be criteria established to determine the amenability of the youth to services available to the juvenile court. On this last point, there was varying specificity for the criteria. The specificity changed with the chronology of the Federal efforts, so that by the time of the Juvenile Justice and Delinquency Prevention Task Force in 1976, the recommendations insisted that only the most serious offenders should be transferred to the adult court. Seriousness was indicated by insistence that the delinquent act be "aggravated or heinous in nature or part of a repetitious pattern of delinquent acts."

In addition to recommending heightened due process safeguards, Federal recommendations (culminating with the Juvenile Justice and Delinquency Prevention Task Force) specifically rejected mandatory waiver hearings for juveniles. Though no concrete alternative was suggested to this practice, the Task Force encouraged cautious and infrequent use of waiver.

In regards detention, the Federal guidelines were quite simple. They argued, in effect, that detention should be used sparingly, i.e., for juveniles who represent a danger to themselves or others. Little elaboration was given, except to say that, as a general rule, detention should not be required nor used prior to adjudication.

Similarly, the Federal recommendations on confinement are put in general terms. Their substance was that juvenile confinement should not exceed the period that an adult would serve for the same offense, and that the least restrictive sentencing alternative be used, commensurate with the seriousness of the offense.

These Federal recommendations for dealing with the serious offender are modest in nature, and there has been no concerted Federal effort to address explicitly the many aspects of serious youth crime. How have individual State legislatures reacted to the youth crime problem? One way of answering this question is to say that 27 States* adopted the basic provisions of one of the

---

*Alabama, Colorado, Connecticut, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Mexico, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia.

Federal waiver recommendations cited in Chapter II; 21 States* adopted the Federal guidelines relating to detention; and three States** followed the recommended confinement provision. The influence of Federal recommendations has not been great; this may be due to the fact that they have not been substantial enough to generate much change.

A second way to answer the questions of "how States have reacted legislatively to the youth crime problem" is to look at what they have done on their own. Yet, as a whole only a few States have taken significant steps to adopt or change their procedures to deal with the serious juvenile offender. For example, in the State of California, the waiver provision (Section 707 of the Welfare and Institutions Code) was amended to create a presumption in favor of waiving youth, that are alleged to have committed one of 11 specified target offenses, to adult court for criminal prosecution. A similar provision was passed in the State of Florida which calls for a mandatory waiver hearing for youth age 13-15 and the exclusion of the case from juvenile court for a youth over age 16 who previously has been adjudicated delinquent for one of a series of specified felony offenses. Also, in both Florida and California there are now more severe confinement provisions in effect. In Florida, the law permits the assignment of an adult sanction (i.e., confinement in a youthful offender facility used for youth over 18) for youth waived to adult court and convicted; and in California a youth who is similarly convicted in adult court can be confined in the California Youth Authority until age 23, with the option to "graduate" the youth to prison at the end of that time, if he is believed to still represent a danger to the community.

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*California, Colorado, Florida, Indiana, Louisiana, Mississippi, Montana, Nebraska, New Mexico, New Jersey, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island Tennessee, Utah, Virginia, Washington, Wisconsin, and Wyoming.

**California, Florida, and Louisiana.

In the State of New York, the Juvenile Justice Reform Act of 1976 was amended in the summer of 1978 to include a new "juvenile offender" provision. The basic substance of this legislation is that youth age 13-15 who commit one of a series of specified violent offenses (e.g., murder, rape) are excluded from the jurisdiction of the New York Family Court. This provision, coupled with the maximum age of original jurisdiction of the Family Court being set at 16, makes this law one of the most severe in the country.

Finally, in the States of Colorado, Delaware, and Washington, mandatory sentencing laws have been passed for juveniles. Under these statutory provisions juveniles who are "repeat" or "violent" offenders (in Colorado), or have committed a serious felony (in Delaware and Washington) will be subject to a minimum sentence of confinement in a juvenile facility or instituiton. Such confinement does not have to be in a training school in Colorado, although it may be. In the other two States, institutional confinement is mandated by the legislation.

State legislative activity discloses a great deal of confusion and mixed sentiment concerning what to do about the serious juvenile offender. The policy options available to the States are numerous. Many State legislators may not want to take immediate action to change methods or dealing with serious juvenile offenders. The current means for handling such offenders may be adequate in such States, given a range of services available through the juvenile court and a waiver mechanism that can be used for certain serious offenders. Other States may prefer to develop new intensive treatment centers like the ones in Massachusetts as alternatives to maximum security training schools, or to develop special programs for juvenile offenders that phase in and out of the system, as in Minnesota.

At the more punitive end of the spectrum, State policy makers have felt compelled to deal with the serious delinquent by major changes in their juvenile law like those of California, Florida, New York, Colorado, Delaware, and Washington (discussed in detail in Chapter IV). The relevant procedures in these States are designed either to treat serious juvenile offenders as adults or to put some kind of mandatory/determinate sentencing scheme within the juvenile justice system.

It should be emphasized that the results of this statutory analysis show a definite trend towards punitive procedures for dealing with the serious juvenile offender. This conclusion follows because the punitive changes are the only ones which stand out in the statutes. It was not possible to discover less punitive means that may have been developed and implemented by States, because existing legislation does not refer to procedures tailored to deal with the serious offender. Rather, the statutes deal with delinquents and delinquency in general. A second limitation in the results of this report is that it was restricted to the written statutes. It was not possible to determine how the statutes have been interpreted in practice or how often they are used.

However, despite the fact that the findings have limitations, some important information has been acquired. California, Florida, New York, Colorado, Delaware, and Washington have made radical departures in legislation for dealing with serious juvenile offenders. Also, legislation introduced in Kentucky and Illinois followed changes in these six States even though not enacted. This indicates that major steps to "get tougher" on juveniles for serious juvenile offenses have been taken mainly in the more urbanized States. Meanwhile, the vast majority of the States continue to hold to the more traditional juvenile court philosophy of rehabilitation.

APPENDIX A

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2. Code of Laws of South Carolina, the Michie Company, Charlottesville, Virginia (Supp. 1975)

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4. Colorado Revised Statutes, Bradford-Robinson Printing Company, Denver, Colorado (Supp. 1978)

5. Connecticut General Statutes Annotated, Boston Law Book Company, Boston Massachusetts and West Publishing Company, St. Paul, Minnesota (Supp. 1978)

6. Consolidated Laws of New York, Family Court Act, Edward Thompson Company, Mineola, New York (Supp. 1978)

7. Delaware Code Annotated, The Michie Company, Charlotesville, Virginia (Supp. 1977)

8. Florida Statutes Annotated, The Harrison Company, Atlanta, Georgia and West Publishing Company, St. Paul, Minnesota (Supp. 1978)

9. House Committee Substitute for Senate Bill 143, General Assembly, Frankfort, Kentucky (March 8, 1978)

10. Illinois Statutes Annotated, Burdette Smith Company, Chicago, Illinois and West Publishing Company, St. Paul, Minnesota (Supp. 1978).

11. Indiana Statutes Annotated, The Bobbs-Merrill Company Inc., Indianapolis, Indiana (Supp. 1977)

12. Kent v. United States, 383 United States Reports 1 (1966)

13. Kentucky Revised Statutes, The Bobbs-Merrill Company, Indianapolis, Indiana (Supp. 1978)

14. Louisana Statutes Annotated, West Publishing Company, St. Paul, Minnesota (Supp. 1978)

15. New Jersey Statutes Annotated, Soney and Sage Company, Newark, New Jersey and West Publishing Company, St. Paul, Minnesota (Supp. 1978)

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17. Pennsylvania Statutes Annotated, George T. Bisel Company, Philadelphia, Pennsylvania and West Publishing Company, St. Paul, Minnesota (Supp. 1978)

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21. National Advisory Commission on Criminal Justice Standards and Goals. Corrections. Washington, D.C.: Government Printing Office, 1973.

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24. New York State Division of Criminal Justice Services, Juvenile Justice Institute. Juvenile Justice Report, Vol. 1, No. 3 (August 1978).

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26. Railsback, Thomas F., "Juvenile Justice." Chicago-Kent Law Review 52 (1975).

27. U. S. Department of Justice, Law Enforcement Assistance Administration, Office of General Counsel. Indexed Legislative History of the Juvenile Justice and Delinquency Prevention Act of 1974. October 29, 1974.

APPENDIX B

FEDERALLY RECOMMENDED DISPOSITIONAL MECHANISMS FOR HANDLING SERIOUS OFFENDERS

APPENDIX B

FEDERALLY RECOMMENDED DISPOSITIONAL MECHANISMS FOR HANDLING SERIOUS OFFENDERS

The provisions itemized in this Appendix reflect the essence of the seven instances of Federal direction discussed in Chapter II of this paper.

1. Crime Commission Waiver Provision: "To be waived a youth should be over a certain age (perhaps 16); the alleged offense should be relatively grave (the equivalent of a felony, at least); his prior offense record should be of a certain seriousness; and, his treatment record discouraging."

   Source: Task Force Report: Juvenile Delinquency and Youth Crime, President's Commission on Law Enforcement and the Administration of Justice (1967), page 25.

2. National Advisory Commission Waiver Provision: "The family court should have the authority to order certain delinquency cases to be processed as if the alleged delinquent was above the maximum age for family court delinquency jurisdiction. After such action, the juvenile should be subject to being charged, tried, and (if convicted) sentenced as an adult.

   An order directing that a specific case be processed as an adult prosecution should be entered only under the following circumstances:

   a. The juvenile involved is above a designated age;
   b. A full and fair hearing has been held on the propriety of the entry of such an order; and
   c. The judge of the family court has found that such action is in the best interest of the public..."

   Source: National Advisory Commission on Criminal Justice Standards and Goals, Courts, Washington, D.C., Government Printing Office, 1973, Standard 14.3, page 300.

3. National Advisory Commission Detention Standard: "Each State should enact legislation by 1975 limiting the delinquency jurisdiction of the courts to those juveniles who commit acts that if committed by an adult would be crimes."

   The legislation should also include provisions governing the detention of juveniles accused of delinquent conduct, as follows:

1. A prohibition against detention of juveniles in jails, lockups, or other facilities used for housing adults accused or convicted of crime.
2. Criteria for detention prior to adjudication of delinquency matters which should include the following:
   a. Detention should be considered as a last resort where no other reasonable alternative is available.
   b. Detention should be used only where the juvenile has no parent, guardian, custodian, or other person able to provide supervision and care for him and be able to assure his presence at subsequent judicial hearings.
3. Prior to first judicial hearing, juveniles should not be detained longer than overnight.
4. Law enforcement officers should be prohibited from making the decision as to whether a juvenile should be detained. Detention decisions should be made by intake personnel and the court.

The legislation should authorize a wide variety of diversion programs as an alternative to formal adjudication. Such legislation should protect the interests of the juvenile by assuring that:

1. Diversion programs are limited to reasonable time periods.
2. The juvenile or his representative has the right to demand formal adjudication at any time as an alternative to participation in the diversion program.
3. Incriminating statements made during participation in diversion programs are not used against the juvenile if a formal adjudication follows.

Legislation, consistent with Standard 16.8 but with the following modifications, should be enacted for the disposition of juveniles:

1. The court should be able to permit the child to remain with his parents, guardian, or other custodian, subject to such conditions and limitations as the court may prescribe.
2. Detention, if imposed, should not be in a facility used for housing adults accused or convicted of crime.
3. Detention, if imposed, should be in a facility used only for housing juveniles who have committed acts that would be criminal if committed by an adult.
4. The maximum terms, which should not include extended terms, established for criminal offenses should be applicable to juveniles or youth offenders who engage in activity prohibited by the criminal code even though the juvenile or youth offender is processed through separate procedures not resulting in a criminal conviction."

Source: National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Washington, D.C., Government Printing Office, 1973, Standard 16.9, page 573.

4. Juvenile Justice and Delinquency Prevention Act Waiver Provision: "A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile sixteen years and older alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony punishable by a maximum penalty of ten years imprisonment or more, life imprisonment, or death, criminal prosecution on the basis of the alleged act may be begun by motion to transfer if the Attorney General in the appropriate District Court of the United States..."

   Source: Juvenile Justice and Delinquency Prevention Act of 1974, Title 18, Section 5032 as amended, U.S. Code.

5. Juvenile Justice and Delinquency Prevention Act - Confinement: "...Commitment...Should not extend beyond the juvenile's twenty-first birthday or the maximum term which could have been imposed on an adult convicted of the same offense..."

   Source: Juvenile Justice and Delinquency Prevention Act of 1974, Title 18, Section 5037 as amended, U.S. Code.

6. Juvenile Justice and Delinquency Prevention Task Force - Waiver and Transfer: "The family court should have the authority to waive jurisdiction and transfer a juvenile for trial in adult criminal court if:

   1. The juvenile is charged with a delinquent act as defined in Standard 9.1.
   2. The juvenile was 16 years or older at the time of the alleged commission of the delinquent act.
   3. The alleged delinquent act is:
      a. aggravated or heinous in nature or
      b. part of a pattern of repeated delinquent acts.
   4. There is probable cause to believe the juvenile committed acts that are to be the subject of the adult criminal proceedings if waiver and transfer are approved.
   5. The juvenile is not amenable, by virtue of his maturity, criminal sophistication, or past experience in the juvenile justice system, to services provided through the family court.
   6. The juvenile has been given a waiver and transfer hearing that comports with due process including but not limited to the right to counsel and a decision rendered in accord with specific criteria promulgated by either the court or the legislature. The Kent v. United States, 383 U.S. 541 (1966), criteria should be the minimum specific criteria on which these decisions are based."

Source: National Advisory Committee on Criminal Justice Standards and Goals. *Juvenile Justice and Delinquency Prevention: Report of the Task Force on Juvenile Justice and Delinquency Prevention*. Washington, D.C.: Government Printing Office, 1977, Standard 9.5, page 303.

7. Juvenile Justice and Delinquency Prevention Task Force - Detention: "A juvenile should not be detained in any residential facility, whether secure or open, prior to a delinquency adjudication unless detention is necessary for the following reasons:

    1. To insure the presence of the juvenile at subsequent court proceedings;
    2. To provide physical care for a juvenile who cannot return home because there is no parent or other suitable person able and willing to supervise and care for him or her adequately;
    3. To prevent the juvenile from harming or intimidating any witness, or otherwise threatening the orderly progress of the court proceedings;
    4. To prevent the juvenile from inflicting bodily harm on others; or
    5. To protect the juvenile from bodily harm.

    A detained juvenile should be placed in the least restrictive residential setting that will adequately serve the purposes of detention."

    Source: National Advisory Committee on Criminal Justice Standards and Goals. *Juvenile Justice and Delinquency Prevention: Report of the Task Force on Juvenile Justice and Delinquency Prevention*. Washington, D.C.: Government Printing Office, 1977, Standard 12.7, p. 390.

PART B

JURISDICTION

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EXECUTIVE SUMMARY

PURPOSE

The purpose of the volume on jurisdiction has been to review statutory provisions regarding jurisdiction of the juvenile court and the criminal court over youths under the age of 18. This includes attention to the procedure of waiver which transfers juveniles from the juvenile court to the criminal court (or the reverse). The focus of the paper is on youths accused of serious offenses. The aim is to give the reader an overview of jurisdictional statutes affecting juveniles in all 51 State jurisdictions. The term "jurisdictions" will be used throughout for this purpose.

METHOD

This paper is based on a review of available and current literature on jurisdictional statutes and practices in the U.S., and upon a statutes analysis carried out by staff members of the National Juvenile Justice System Assessment Center.

FINDINGS

Jurisdictional statutes regarding youths under 18 who are accused of serious offenses can be summarized under the headings of juvenile court, criminal court, and waiver.

Juvenile Court

The juvenile court has jurisdiction over youths under 18 in 39 jurisdictions, over youths under 17 in eight jurisdictions, and over youths under 16 in four jurisdictions. The minimum age at which the juvenile court can establish jurisdiction is either the common law presumption of seven or else no age is specified in 45 of the 51 jurisdictions. In 37 of the 51 jurisdictions, the time at which the jurisdiction of the court attaches is the date of the offense. The duration of juvenile court jurisdiction extends until age 21 in 32 jurisdictions, and until ages 18, 19, or 20 in all except one of the others (where it extends to age 23). All except 10 of the 51 jurisdictions provide for exclusive original jurisdiction over juveniles by the juvenile court.

Criminal Court

The criminal court has original jurisdiction over 16- and 17-year-old youths in the 12 States which have those jurisdictional ages. In 10 jurisdictions, provisions are made to exclude certain serious offenses from the jurisdiction of the juvenile court. In 10 jurisdictions also, there is concurrent jurisdiction between the juvenile and criminal courts.

Waiver

Waiver is a procedure designed for the serious juvenile offender. All but three of the jurisdictions permit waiver. The age at which waiver is allowed varies from 13 to 16, except in the 10 jurisdictions where no minimum waiver age is given. Twenty-six of the jurisdictions require either a felony or a specified serious offense before waiver to the criminal court. In almost all of the jurisdictions, a waiver hearing is required before a juvenile can be transferred to criminal court. Most waiver criteria in the various jurisdictions derive from the Kent decision of the U.S. Supreme Court in 1966.

CONCLUSIONS AND RECOMMENDATIONS

There is great disparity among jurisdictions regarding the statutory provisions on jurisdiction over youth under 18. There is also likely to be great disparity between what the statutes say and what the actual policies and practices are.

Based upon the results of this assessment, the following recommendations are offered:

- The maximum jurisdictional age of the juvenile court for adjudication should be the eighteenth birthday, and for corrections, the twenty-first birthday.
- The minimum jurisdictional age of the juvenile court should be 10.
- The time at when the jurisdiction of the juvenile court attaches should be the date of the offense.
- The juvenile court should have exclusive original jurisdiction over all youths under 18.
- No offense should be excluded from the original jurisdiction of the juvenile court.
- Concurrent jurisdiction between the juvenile and criminal courts should not be allowed.
- Provision for waiver of jurisdiction over juveniles under 18 to the criminal court should be made in all jurisdictions, with a minimum waiver age of 16, a list of serious or repeat offenses required for waiver, and complete due process protections guaranteed.

CHAPTER I

INTRODUCTION

SCOPE OF REPORT

This assessment report will describe the current statutory provisions on jurisdiction of the juvenile and criminal court over youths under 18 in the United States. The report will describe when a youth comes under the jurisdiction of the juvenile court and the jurisdiction ends; when a youth comes under the jurisdiction of the criminal court and under what circumstances; under what conditions may a juvenile be waived from the jurisdiction of the juvenile court to the jurisdiction of the criminal court, or the reverse. The focus of this study will be those youths who are before the court for serious or repetitive offenses.

The geographical scope of this paper will be the 51 jurisdictions of the U. S. comprising the 50 States and the District of Columbia. The term "jurisdictions" will be used throughout for this purpose.

METHOD

This description of statutory provisions regarding jurisdiction is based on a review of current available literature on the subject, together with a statute analysis conducted by staff members of the National Juvenile Justice System Assessment Center in November of 1978. Documents which proved helpful in this review included the following:

- Rights of Juveniles by Samuel M. Davis, 1974 edition with 1976, 1977, and 1978 Supplements (3, 4, 5, and 6).
- A Comparative Analysis of Standards and State Practices: Jurisdiction-Delinquency, Volume IV by the 1976 National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention (11).

- Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States by Mark M. Levin and Rosemary C. Sarri (7).
- Confronting Youth Crime; Background Paper by Franklin E. Zimring (9).
- The 1966 U.S. Supreme Court decision of Kent v. United States (2).

The most current information available regarding the jurisdictional statutes was used, whether that came from a published document or from the statutes analysis by NJJSAC staff. The information is presented in the narrative of the report and in several figures and tables in a manner intended to provide easy accessibility for the reader.

IMPORTANCE OF THE TOPIC

Which court will have jurisdiction over youths under 18 accused of serious offenses becomes increasingly important. Originally, the emphasis of the juvenile court was on "wayward children," including runaways, truants, and children thought to be beyond the control of their parents. But youths who are accused of murder, rape, armed robbery, aggravated assault, and home burglary may be considered beyond waywardness. It is this group that is testing the capacity of the juvenile court to provide appropriate handling and treatment.

There have been various efforts through the years to limit the jurisdiction of the juvenile court. Methods have included lowering the maximum jurisdictional age, excluding certain serious offenses from the jurisdiction of the juvenile court, providing for concurrent jurisdiction between the juvenile and criminal courts, and, most importantly, providing for the waiver of jurisdiction over juveniles from the juvenile court to the criminal court.

The statutes regarding these and other jurisdictional matters will be described in the following chapters.

CHAPTER II

THE JURISDICTION OF THE JUVENILE COURT OVER JUVENILES NOT YET 18

INTRODUCTION

The jurisdiction of the juvenile court is determined by age and by offense. While the juvenile court "deals with truants, incorrigibles, runaways, children in danger of moral dissolution, and other 'wayward' children. . ." (3, p. 22), it is not "wayward" children that this report concerns. Rather, it is juveniles who are accused of serious offenses or who have a pattern of behavior involving serious problems. The jurisdiction of the juvenile court over these juveniles, who are beyond "waywardness," is defined and limited in specific ways.

Elements to be discussed in this chapter are the maximum jurisdictional age for the juvenile court; the minimum jurisdictional age; the time at which jurisdiction attaches; the duration of juvenile court jurisdiction; and the circumstances in which the juvenile court has exclusive jurisdiction.

STATUTORY PROVISIONS

Maximum Jurisdictional Age

In 39 of the 51 jurisdictions under consideration, the juvenile court has original jurisdiction over youths until they reach the age of 18. In 8 jurisdictions, the juvenile court has jurisdiction until age 17, and in 4 jurisdictions, until age 16. It is this age below which the juvenile court has original jurisdiction that is here referred to as the maximum jurisdictional age.*

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*Please note that the maximum jurisdictional ages referred to in this report are for juveniles who are before the court for delinquent acts or offenses which would be crimes for adults. A few States have higher maximum jurisdictional ages for nondelinquent acts.

Figure 1 (p. 99) presents the maximum jurisdictional age for each of the 51 jurisdictions.

There have been some changes in these maximum jurisdictional ages in recent years. Since 1974, all of the changes have been revisions upwards. Alabama raised its maximum age below which the juvenile court would have jurisdiction from 16 to 17, and then from 17 to 18 in this period. Florida, Maine, and New Hampshire raised their maximum ages from 17 to 18 in 1976, and in 1977, South Carolina raised the maximum jurisdictional age from 16 to 17 (5, p. 122).

Surprisingly, the few changes made in the last five years have been ones which have broadened rather than limited the jurisdiction of the juvenile court insofar as age limits are concerned.

This suggests that the more recent efforts to limit the jurisdiction of the juvenile court are not focused on lowering the jurisdictional age, but on other methods which will be discussed in later sections of this report.

Minimum Jurisdictional Age

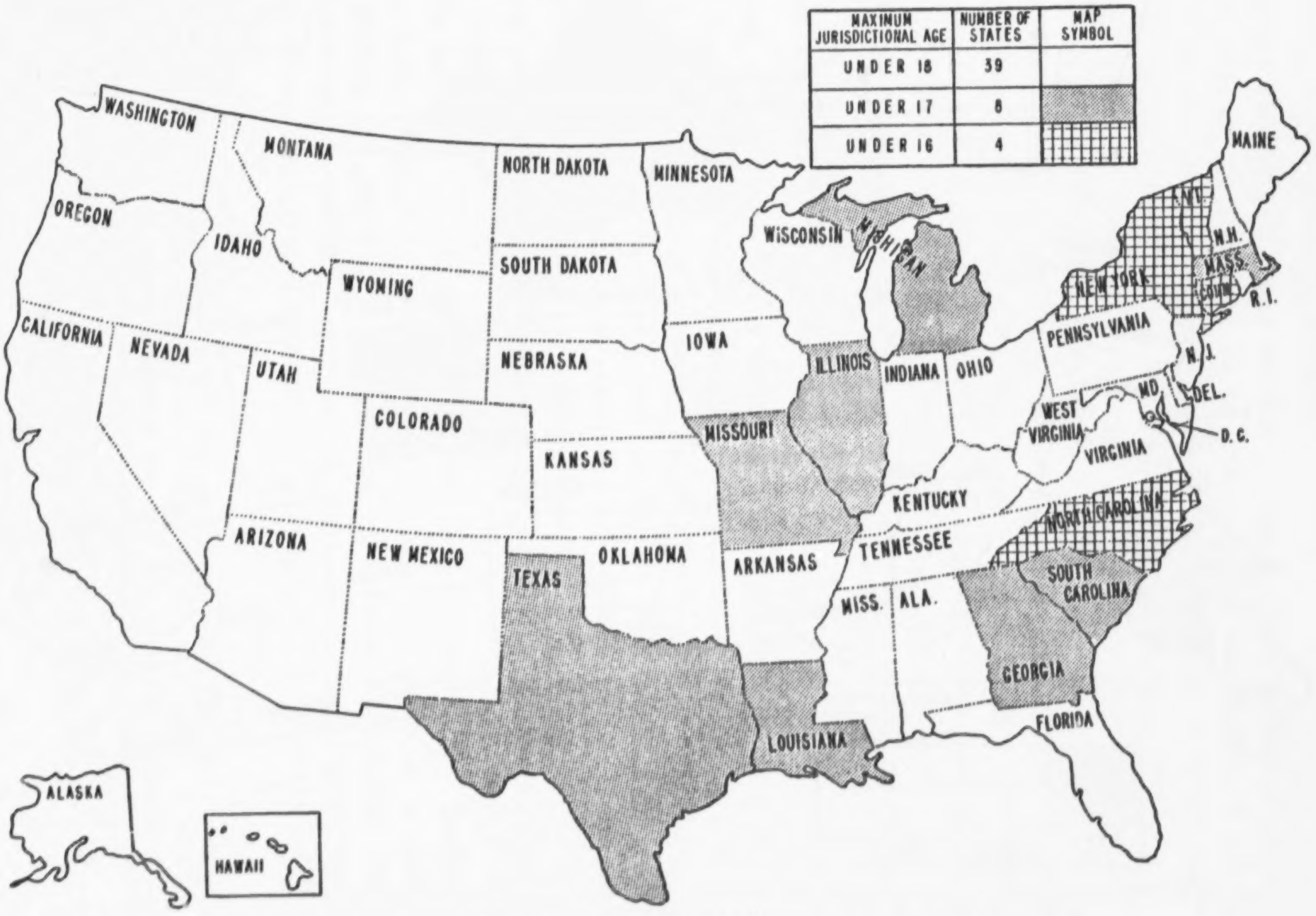
What is the minimum age at which juveniles may be held responsible for their actions insofar as the juvenile court is concerned? "Under common law, children under the age of seven were deemed incapable of committing criminal acts; the capacity of any child under fourteen had to be proved. . .in any criminal proceeding" (9, p. 46). The question of minimum age, or age of culpability, has not received much attention either in State juvenile codes or by the various standards groups (8, p. 6).

A summary of the minimum age for the 51 jurisdictions is presented in Figure 2 (p. 100).

It has been suggested that "the infrequent nature of offenses by young children has led some to conclude that minimum age provisions are not necessary" (11, p. 7). In any case, it is evident that few such provisions have been made.

FIGURE I

MAXIMUM JURISDICTIONAL AGE FOR JUVENILE COURT BY STATE*: 1978



MAXIMUM JURISDICTIONAL AGE	NUMBER OF STATES	MAP SYMBOL
UNDER 18	39	☐
UNDER 17	8	▒
UNDER 16	4	▦

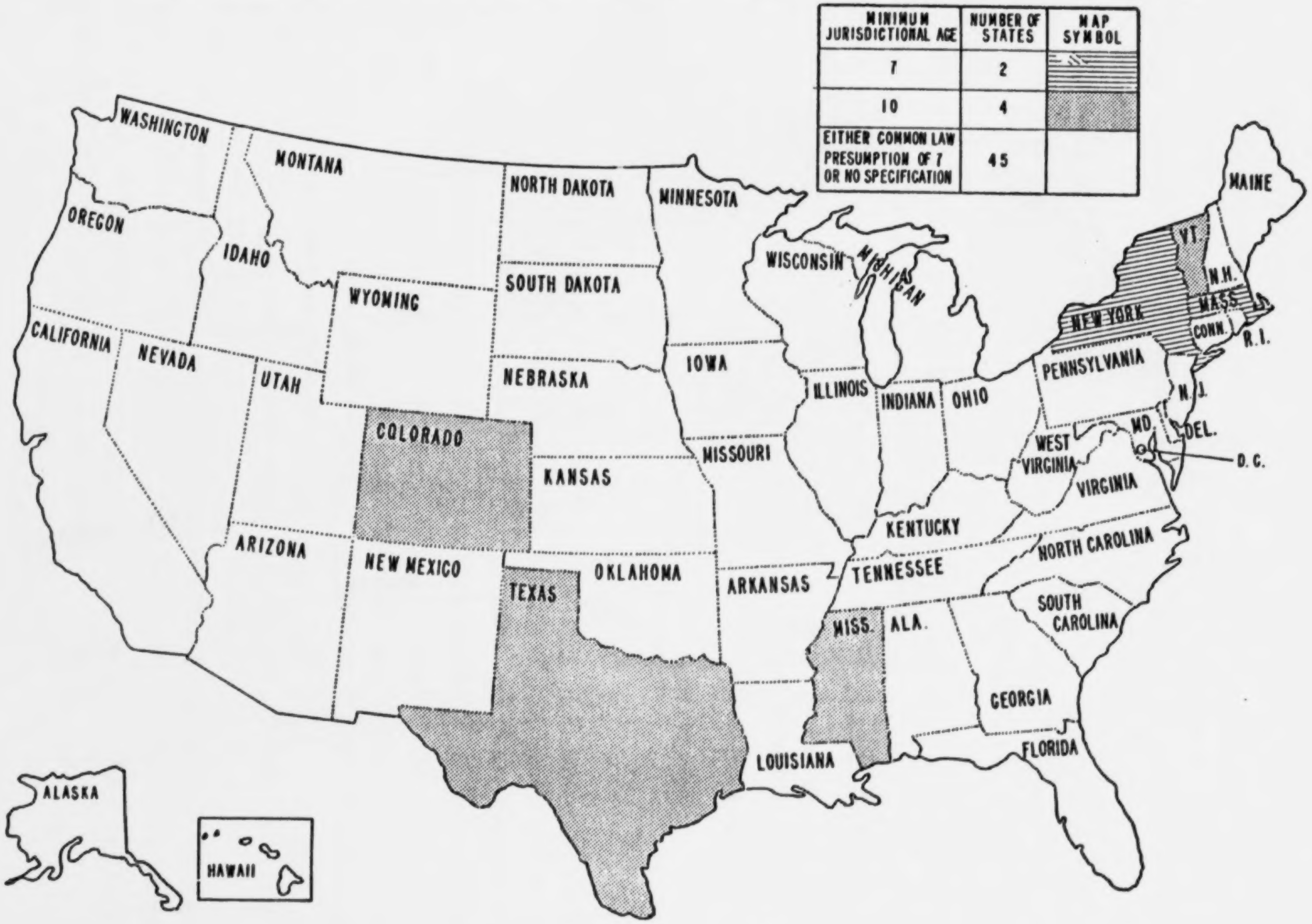
WASHINGTON
OREGON
CALIFORNIA
NEVADA
IDAHO
MONTANA
WYOMING
UTAH
ARIZONA
COLORADO
NEW MEXICO
NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
TEXAS
MINNESOTA
IOWA
MISSOURI
ARKANSAS
LOUISIANA
WISCONSIN
MICHIGAN
ILLINOIS
INDIANA
OHIO
KENTUCKY
TENNESSEE
MISS.
ALA.
GEORGIA
FLORIDA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
WEST VIRGINIA
MD
D.C.
DEL.
N.J.
PENNSYLVANIA
NEW YORK
VT.
N.H.
MAINE
MASS.
CONN.
R.I.
ALASKA
HAWAII

* INCLUDES DISTRICT OF COLUMBIA

Source: 3, 4, 5, and 6

FIGURE 2

MINIMUM JURISDICTIONAL AGE FOR JUVENILE COURT BY STATE*: 1974



MINIMUM JURISDICTIONAL AGE	NUMBER OF STATES	MAP SYMBOL
7	2	▤
10	4	▨
EITHER COMMON LAW PRESUMPTION OF 7 OR NO SPECIFICATION	45	

WASHINGTON
MONTANA
NORTH DAKOTA
MINNESOTA
MAINE
OREGON
IDAHO
WISCONSIN
MICHIGAN
VT.
N.H.
MASS.
NEW YORK
CONN.
R.I.
WYOMING
SOUTH DAKOTA
CALIFORNIA
NEVADA
UTAH
NEBRASKA
IOWA
ILLINOIS
INDIANA
OHIO
PENNSYLVANIA
N.J.
DEL.
MD.
D.C.
COLORADO
KANSAS
MISSOURI
WEST VIRGINIA
VIRGINIA
KENTUCKY
ARIZONA
NEW MEXICO
TEXAS
OKLAHOMA
ARKANSAS
TENNESSEE
NORTH CAROLINA
SOUTH CAROLINA
MISS.
ALA.
GEORGIA
LOUISIANA
FLORIDA
ALASKA
HAWAII

* INCLUDES DISTRICT OF COLUMBIA

Source: 7

Time At Which Jurisdiction Attaches

Should the jurisdiction of the juvenile court attach at the time the offense took place, or at the point of detention of the youth? The method for determining when jurisdiction attaches is important because it can make the difference between juvenile court and criminal court jurisdiction if the youth involved is near the maximum jurisdictional age.

Thirty-seven jurisdictions use the date of the offense as the basis for determining jurisdictional age. Fourteen jurisdictions use the date when the youth is first detained for the offense as the basis for when juvenile court jurisdiction will attach.

Figure 3 (p. 102) shows the breakdown by jurisdiction.

Duration of Jurisdiction of Juvenile Court

What is the appropriate duration of juvenile court jurisdiction? Most jurisdictions continue jurisdiction over juveniles until their twenty-first birthday or until the age of majority. However, this traditional view has undergone some changes in recent years, and the statutory provisions of the jurisdictions reflect a significant degree of variety on the matter. Figure 4 (p. 103) presents the maximum age for continuing jurisdiction for each of the 51 jurisdictions.*

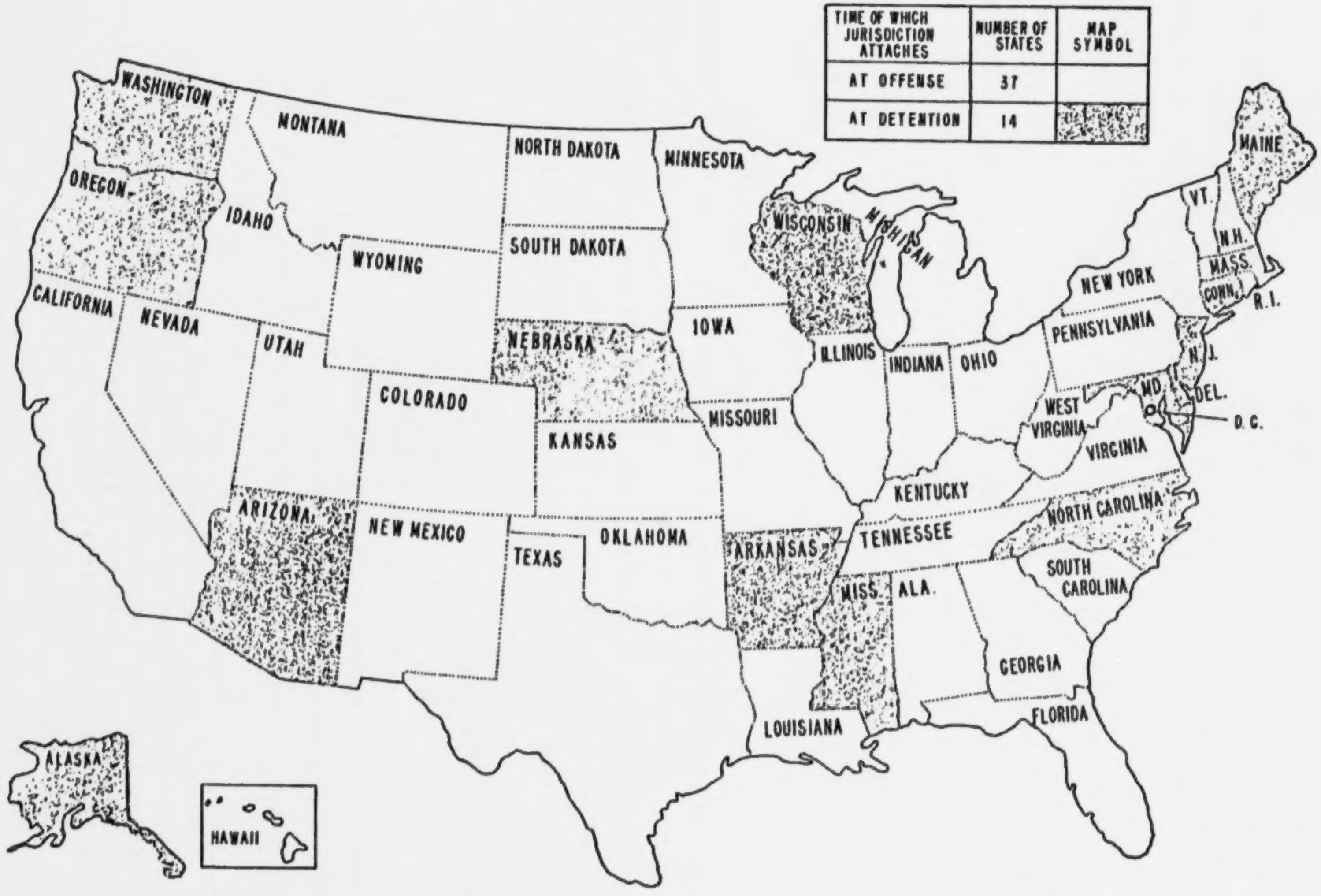
The matter of duration of jurisdiction is especially important for the more serious juvenile offender. If, for example, a youth comes before the juvenile court for an aggravated or violent offense just a few months before reaching the maximum jurisdictional age, the court faces a dilemma. Either there must be a provision for

---

*There may be exceptions to the maximum ages for continuing jurisdiction in some circumstances. Robert Coates reports that in Massachusetts the usual maximum age is 18, but the Department of Youth Services may have jurisdiction past 18 if they have worked with the youth previously.

FIGURE 3

TIME AT WHICH JUVENILE COURT JURISDICTION ATTACHES BY STATE*: 1974



TIME OF WHICH JURISDICTION ATTACHES	NUMBER OF STATES	MAP SYMBOL
AT OFFENSE	37	☐
AT DETENTION	14	▨

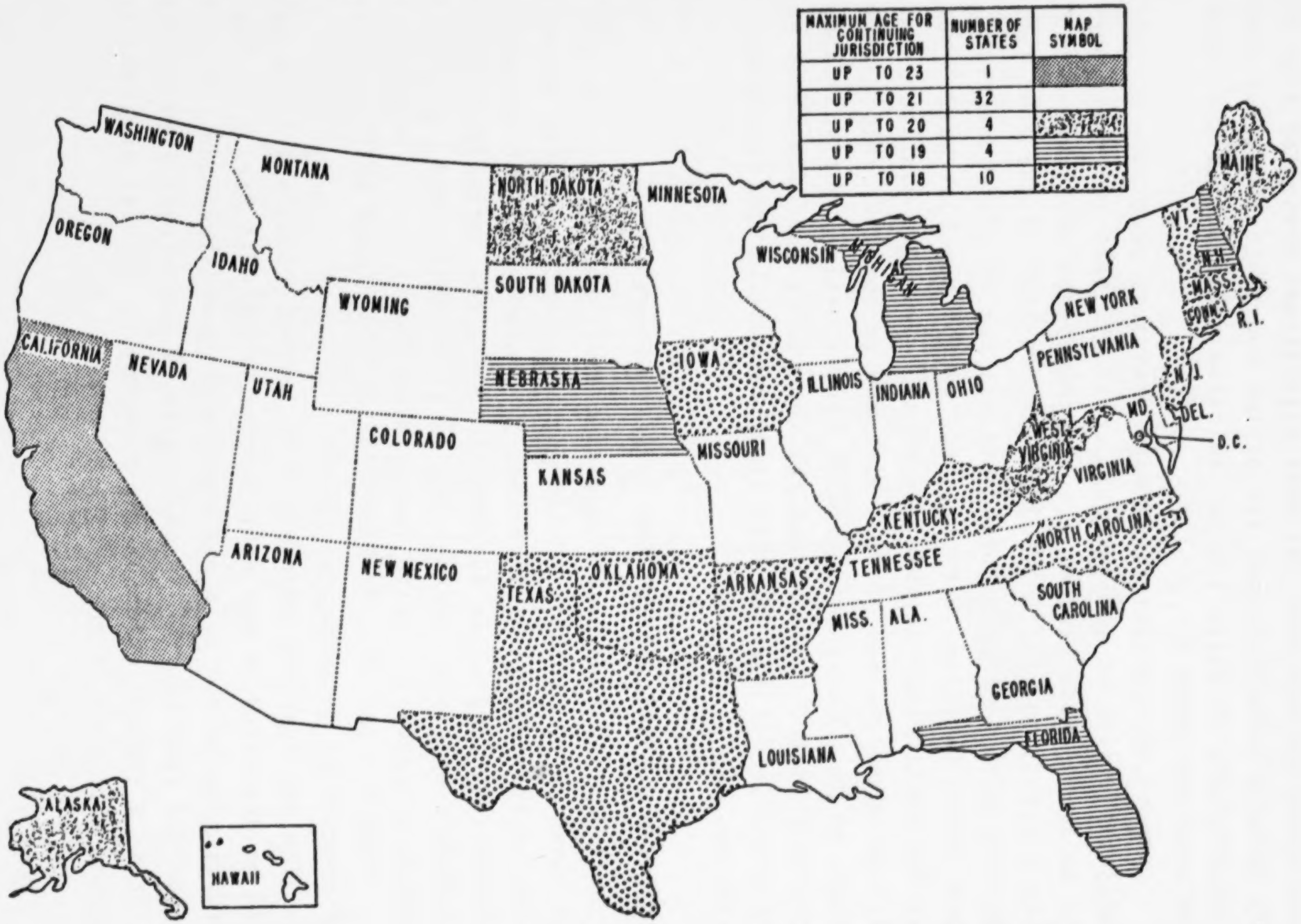
WASHINGTON
OREGON
CALIFORNIA
NEVADA
IDAHO
MONTANA
WYOMING
UTAH
ARIZONA
COLORADO
NEW MEXICO
NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
TEXAS
MINNESOTA
IOWA
MISSOURI
ARKANSAS
LOUISIANA
WISCONSIN
MICHIGAN
ILLINOIS
INDIANA
OHIO
KENTUCKY
TENNESSEE
MISS.
ALA.
GEORGIA
FLORIDA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
WEST VIRGINIA
PENNSYLVANIA
NEW YORK
MD.
DEL.
D.C.
N.J.
CONN.
R.I.
MASS.
N.H.
VT.
MAINE
ALASKA
HAWAII

* INCLUDES DISTRICT OF COLUMBIA

Source: 7

FIGURE 4

MAXIMUM AGE FOR CONTINUING JUVENILE COURT JURISDICTION BY STATE* :1978


WASHINGTON
MONTANA
NORTH DAKOTA
MINNESOTA
OREGON
IDAHO
WYOMING
SOUTH DAKOTA
WISCONSIN
MICHIGAN
NEW YORK
VT.
N.H.
MASS.
CONN.
R.I.
MAINE
CALIFORNIA
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ILLINOIS
INDIANA
OHIO
PENNSYLVANIA
N.J.
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COLORADO
KANSAS
MISSOURI
WEST VIRGINIA
VIRGINIA
KENTUCKY
NORTH CAROLINA
ARIZONA
NEW MEXICO
TEXAS
OKLAHOMA
ARKANSAS
TENNESSEE
SOUTH CAROLINA
MISS.
ALA.
GEORGIA
LOUISIANA
FLORIDA
ALASKA
HAWAII

MAXIMUM AGE FOR CONTINUING JURISDICTION	NUMBER OF STATES	MAP SYMBOL
UP TO 23	1	▩
UP TO 21	32	☐
UP TO 20	4	▒
UP TO 19	4	▤
UP TO 18	10	░

* INCLUDES DISTRICT OF COLUMBIA

SOURCE: NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER, 1978 continuing jurisdiction for some significant period of time beyond the maximum jurisdictional age or the court will be under considerable pressure to waive its jurisdiction and transfer the youth to the criminal court (11,p. 17).

Almost all jurisdictions make statutory provision to continue the jurisdiction of the juvenile court at least two years beyond the maximum jurisdictional age. A comparison of Figure 4 (p.103) with Figure 1 (p. 99) for example, shows that of the four jurisdictions with a maximum jurisdictional age of 16 (Connecticut, New York, North Carolina, Vermont), all except New York have a maximum age for continuing jurisdiction of 18. New York continues jurisdiction up to the age of 21. With few exceptions, this pattern continues so that jurisdictions with higher maximum jurisdictional ages have higher maximum ages for continuing juvenile court jurisdiction. In California, this limit extends to the twenty-third birthday.

Exclusive Jurisdiction of the Juvenile Court

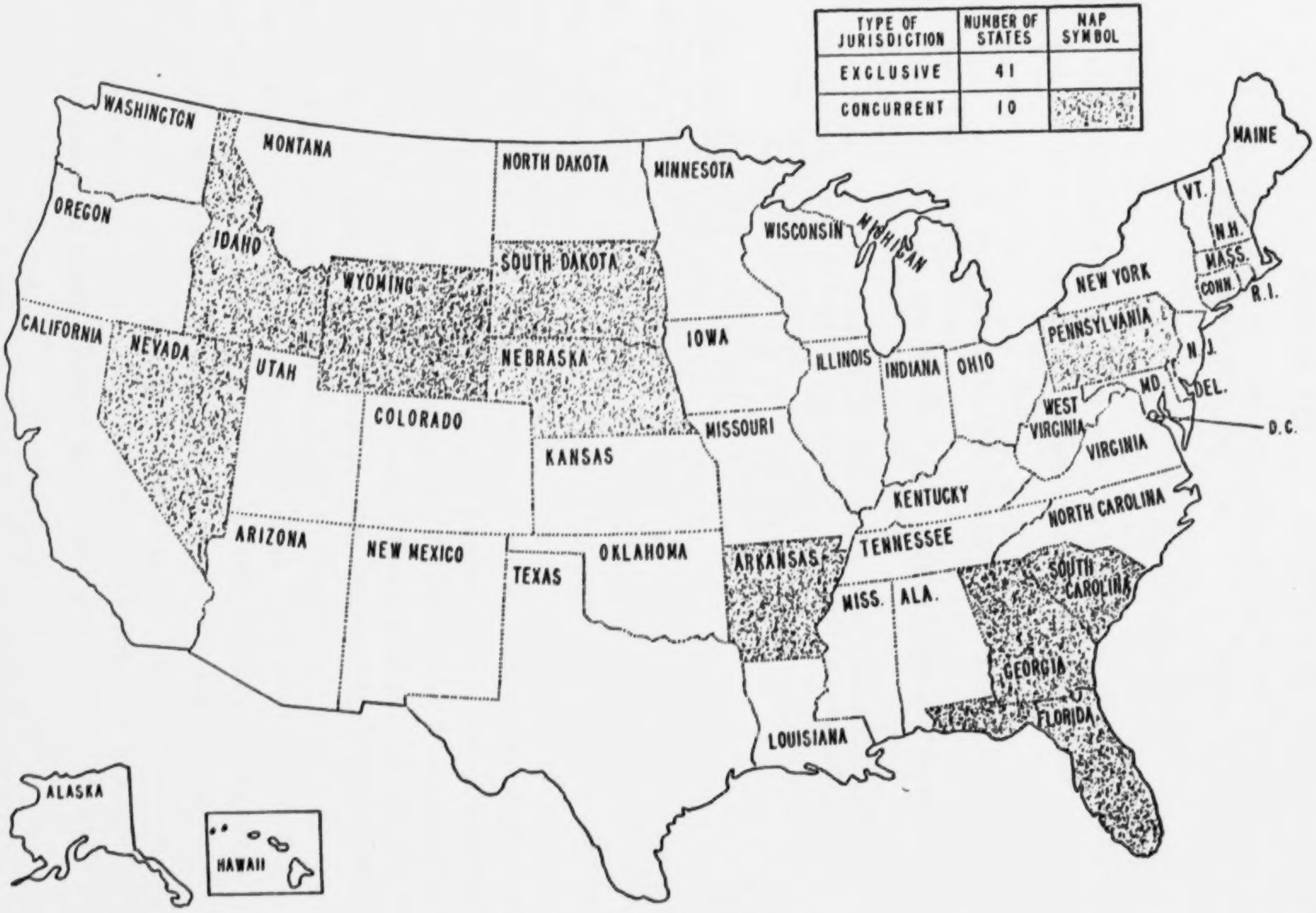
It must be seen as an important limit to the jurisdiction of the juvenile court that not all jurisdictions grant the juvenile court exclusive jurisdiction over juveniles under the maximum jurisdictional age. In 40 jurisdictions, the jurisdiction of the juvenile court is exclusive, but in 11 jurisdictions, the jurisdiction is concurrent with the criminal court.

Figure 5 (p. 105) displays the jurisdictions with exclusive and concurrent jurisdiction.

The implications of concurrent jurisdiction, which are many, will be discussed in the next chapter which will deal with the jurisdiction of the criminal court over juveniles under 18. The reason for this is that in most cases of concurrent jurisdiction--if it is a serious offense--the presumption is that original jurisdiction will fall to the criminal court.

FIGURE 5

TYPE OF JURISDICTION – EXCLUSIVE OR CONCURRENT BY STATE*: 1978


WASHINGTON
MONTANA
NORTH DAKOTA
MINNESOTA
OREGON
IDAHO
SOUTH DAKOTA
WISCONSIN
MICHIGAN
WYOMING
CALIFORNIA
NEVADA
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COLORADO
MISSOURI
KANSAS
KENTUCKY
ARIZONA
NEW MEXICO
OKLAHOMA
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SOUTH CAROLINA
NORTH CAROLINA
FLORIDA
LOUISIANA
MAINE
VT.
N.H.
MASS.
CONN.
R.I.
NEW YORK
PENNSYLVANIA
N.J.
DEL.
MD.
D.C.
WEST VIRGINIA
VIRGINIA
ALASKA
HAWAII

TYPE OF JURISDICTION	NUMBER OF STATES	MAP SYMBOL
EXCLUSIVE	41	
CONCURRENT	10	▨

* INCLUDES DISTRICT OF COLUMBIA

Source: 3, 4, 5, and 6

CHAPTER III

THE JURISDICTION OF THE CRIMINAL COURT OVER YOUTH NOT YET 18

INTRODUCTION

Age and offense also limits the jurisdiction of the criminal court. States provide that youth under 18 can come under criminal court jurisdiction when:

- they reside in jurisdictions with lower juvenile court jurisdictional ages
- the offenses of which they are accused are excluded from juvenile court jurisdiction, or
- they reside in jurisdictions where the juvenile and criminal courts have concurrent jurisdiction and they have been indicted in criminal court.

STATUTORY PROVISIONS

Jurisdiction Over Youth Ages 16 and 17 in Certain States

It is entirely possible to overlook the fact that there are significant numbers of 16- and 17-year-old youths in this country who come under the original jurisdiction of the criminal court. Referring back to Figure 1 (p. 99), it can be seen that Connecticut New York, North Carolina, and Vermont provide that the juvenile court will have a maximum jurisdictional age of the sixteenth birthday. In Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, South Carolina, and Texas, the maximum age for juvenile court jurisdiction is the seventeenth birthday.

References to "juveniles" in the media and in general discussion rarely make the distinction between various categories of youths who may be under 18 years of age, but may or may not be juveniles and treated as such according to the statutes within a given jurisdiction. The FBI Uniform Crime Reports list arrests by age, sometimes listing those "under 15" and "under 18" (10, p. 182), but do not indicate whether youths will be considered as juveniles or adults in the courts.

Whether a youth comes under the jurisdiction of the juvenile court or the criminal court can make a significant difference in the ultimate disposition of the case. For example, if the jurisdiction falls to the criminal court rather than to the juvenile court, it is probable in most jurisdictions that the consequences will include the following:

- the sentence will be longer, especially for a serious offense
- the facilities for detention and correction will be adult jails and prisons
- there will be fewer programs designed for rehabilitation and treatment (9, p. 59).

As the Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders points out, "a child in New Jersey is an adult in New York, and very few States make special provision for the treatment of young offenders in criminal courts" (9, p. 6). These States are Alabama, Connecticut, Georgia, New York, and Wisconsin (9, p. 69). The youthful offender provisions in these jurisdictions vary. They usually stress indeterminate sentencing.

At the same time, there is a trade-off in the transition from juvenile court to criminal court. While youths ordinarily are liable to harsher sanctions in the adult system, they also receive some advantages not usually available in juvenile court, such as:

- the right to trial by jury
- availability of bail
- increased protection of due process rights, such as stricter rules of evidence and more formal procedures
- a sealed juvenile record upon coming into criminal court (9, p. 59).

It is also possible that a juvenile will receive a shorter sentence or probation through adult court disposition because of the indeterminate sentencing policies of the juvenile court.

Clearly, there are qualifications to be made. It depends on the jurisdiction and on the case. Yet the sanctions available, especially for the more serious offender, are greater in the criminal court than in the juvenile court.

Jurisdiction Over Cases Excluded from Juvenile Court

There is a distinction to be made between offenses which are excluded by statute from the original jurisdiction of the juvenile court, offenses over which the juvenile and criminal courts have concurrent jurisdiction, and offenses the juvenile court may transfer to the criminal court following a hearing.

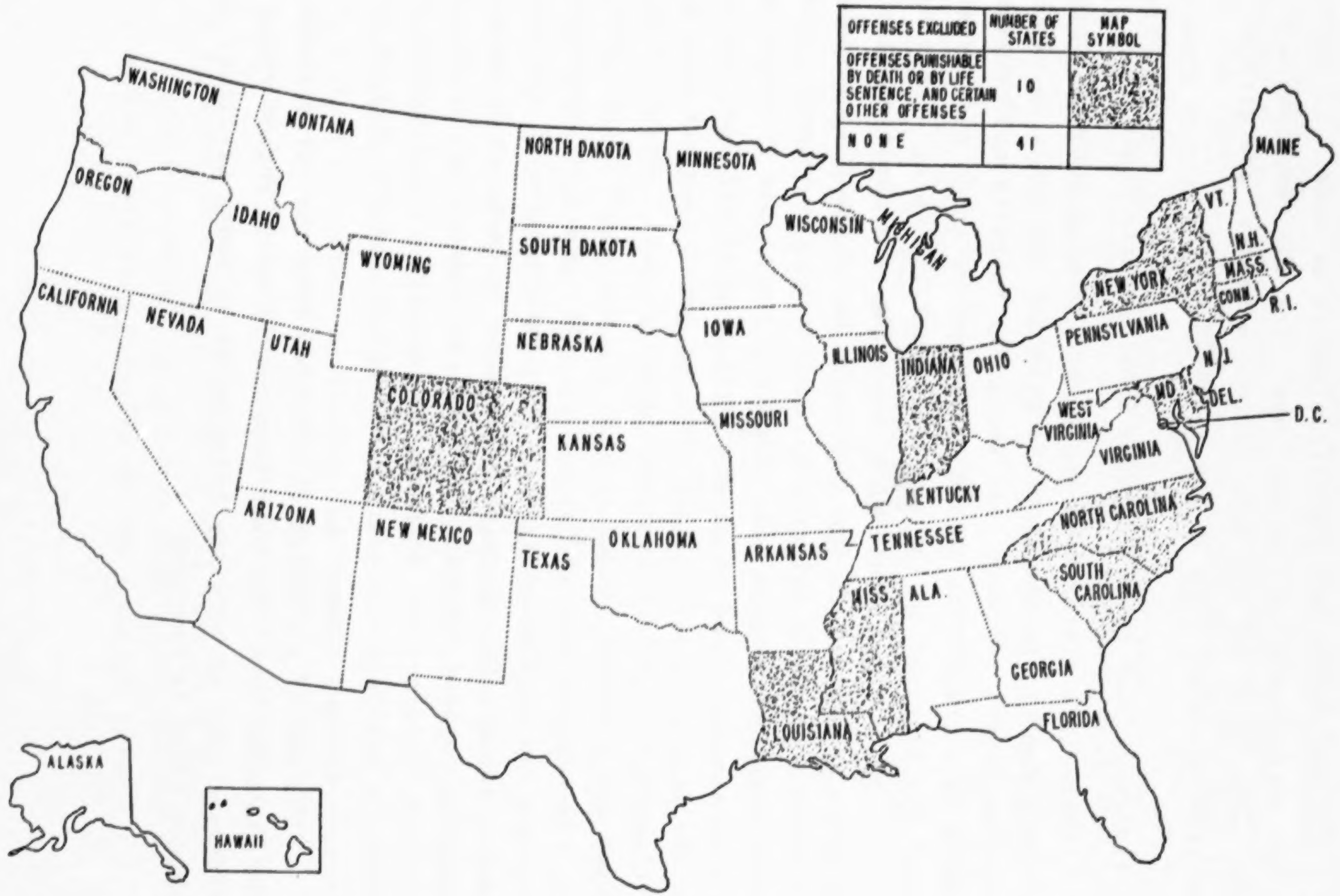
In 10 of the 51 jurisdictions under consideration, the juvenile code provides for the exclusion of specific serious offenses from the original jurisdiction of the juvenile court. These offenses include ones which are punishable by death or by a life sentence, and in several States other offenses are listed. In the remaining 41 jurisdictions, no provisions are made for exclusion of offenses from the juvenile court. Figure 6 (p. 110) shows which jurisdictions provide for exclusion of offenses.

As will be seen in Table 1 (p. 111) these 10 jurisdictions exclude the following offenses from jurisdiction of the juvenile court: murder--5; any crime punishable by death or by life imprisonment--3; capital offenses--2; rape--4; kidnapping--2; burglary--2; assault--2; arson--2; bribery--1; perjury--1; adjudicated delinquent in previous two years for a felony and now charged with certain serious crimes--1.

The use of exclusion of offenses from the jurisdiction of the juvenile court has seen some extension in recent years with offenses such as burglary being added in South Carolina, and murder added in New York.

FIGURE 6

OFFENSES EXCLUDED FROM JUVENILE COURT JURISDICTION BY STATE* : 1978


OFFENSES EXCLUDED
NUMBER OF STATES
MAP SYMBOL
OFFENSES PUNISHABLE BY DEATH OR BY LIFE SENTENCE, AND CERTAIN OTHER OFFENSES
10
▨
NONE
41
WASHINGTON
MONTANA
NORTH DAKOTA
MINNESOTA
MAINE
OREGON
IDAHO
WISCONSIN
MICHIGAN
VT.
N.H.
WYOMING
SOUTH DAKOTA
NEW YORK
MASS.
CONN.
R.I.
CALIFORNIA
NEVADA
UTAH
NEBRASKA
IOWA
PENNSYLVANIA
ILLINOIS
INDIANA
OHIO
N.J.
COLORADO
KANSAS
MISSOURI
MD.
DEL.
D.C.
WEST VIRGINIA
VIRGINIA
KENTUCKY
ARIZONA
NEW MEXICO
OKLAHOMA
TEXAS
ARKANSAS
TENNESSEE
NORTH CAROLINA
SOUTH CAROLINA
MISS.
ALA.
GEORGIA
LOUISIANA
FLORIDA
ALASKA
HAWAII

* INCLUDES DISTRICT OF COLUMBIA

Source: 3, 4, 5, and 6

TABLE 1

JURISDICTIONS EXCLUDING CERTAIN OFFENSES FROM JUVENILE COURT JURISDICTION[a]

JURISDICTION \ OFFENSE	Capital Offenses	Any crime punishable by death or life imprisonment	Adjudicated delinquent in previous two years for a felony and now charged with certain serious felonies	Murder	Rape	Kidnapping	Burglary	Armed Robbery	Assault	Arson	Bribery	Perjury
Colorado		X^1	X^2									
Delaware				X	X	X						
District of Columbia				X^2	X^2		X^2	X^2	X^2			
Indiana				X								
Louisiana	X^3				X^3							
Maryland		X^1						X^2				
Mississippi		X^4										
North Carolina	X^1											
New York				X^4		X^1			X^1	X^1		
South Carolina				X	X		X			X	X	X

[a] All information obtained from Rights of Juveniles, by Samuel M. Davis, 1974 edition, with 1976, 1977, and 1978 supplements except in New York and Colorado which were identified by the National Juvenile Justice System Assessment Center.

[1] 14 or older

[2] 16 or older

[3] 15 or older

[4] 13 or older

Source: 3, 4, 5, and 6

Concurrent Jurisdiction

It is concurrent jurisdiction which some commentators consider to be "perhaps the most invidious limitation on the juvenile courts' jurisdiction" (3, p. 27). The problem is ambiguity. This is especially true when the scope of concurrent jurisdiction is broad, as it is in Arkansas, Idaho, Nebraska, South Carolina, South Dakota, and Wyoming. Ten jurisdictions provide for some form of concurrent jurisdiction as shown in Figure 5 (p. 105) As shown in Table 2 (p. 113), the types of concurrent jurisdiction for each of these ten jurisdictions are: any age, any offense--2; any offense punishable by death or life imprisonment--2; felony offenses--2; capital offenses--1; felony offenses, all children over 16 charged with any offense--1; murder--1; riot--1; assault and battery--1; and larceny--1.

Regarding concurrent jurisdiction, Levin and Sarri note that:

> "The prosecutor in certain situations is empowered to...make the initial decision about which court will try certain juveniles. His decision is often different from that reached by the juvenile court judge, who is powerless to stop the criminal adjudication in these cases...This type of statutory provision may be phrased either as a grant of authority to the prosecutor or in terms of the concurrent jurisdiction of the criminal court, but they result in identical practices" (7, p. 18).

In this chapter, criminal court jurisdiction over 16- and 17-year-olds, statutory provisions for exclusion of certain offenses from the juvenile court, and concurrent jurisdiction between the juvenile and criminal courts have been summarized. In the following chapter, statutory provisions for the transfer of youths among juvenile court and the criminal court will be discussed.

TABLE 2

TYPES OF CONCURRENT JURISDICTION[a]

OFFENSE / JURISDICTION	Any age; any offense	Any offense punishable by death or life imprisonment	Felony offenses	Felony offenses; all children over 16 charged with any offense	Capital offenses	Murder	Riot	Assault or battery	Larceny
Arkansas	X								
Florida		X							
Georgia		X							
Idaho			X						
Nebraska				X					
Nevada					X				
Pennsylvania						X			
South Carolina							X	X	X
South Dakota			X						
Wyoming	X								

[a] All information obtained from Rights of Juveniles, by Samuel M. Davis, 1974 edition, with 1976, 1977, and 1978 supplements except in New York and Colorado which were identified by the National Juvenile Justice System Assessment Center.

CHAPTER IV

WAIVER OF JURISDICTION

INTRODUCTION

The procedures which provide for the juvenile court to waive its jurisdiction and transfer a youth to the criminal court are of special importance where youths are involved in serious offenses. As Samuel M. Davis puts it:

> Waiver of jurisdiction by a juvenile court is the process whereby the court relinquishes its jurisdiction over a child and transfers the case to a court of criminal jurisdiction for prosecution as in the case of an adult. The effect of a decision to waive jurisdiction over a child is to deny to the child the protection and ameliorative treatment afforded by the juvenile process, substituting therefore the punitive treatment found in the criminal process. To be sure, in a criminal prosecution the juvenile will enjoy all the rights guaranteed to adults in the criminal process, but a great deal is given up to secure those rights (3, p. 105).

In this chapter, statutory provisions regarding various aspects of waiver proceedings will be considered, including:

- minimum waiver age
- offense criteria for waiver
- mandatory waiver procedures
- "reverse" waiver
- due process requirements.

First, however, a word on terminology. Few words in the vocabulary of juvenile justice have more synonyms than "waiver." Waiver is also known as transfer, bind-over, certification, and remand. Various jurisdictions employ various terms, and often the same jurisdiction will use more than one term. The word "waiver" is perhaps the most commonly used, at least in the literature on the subject. "Transfer," and more colloquially, "bind-over," are also in wide usage. For the purposes of this paper, the word "waiver" will be used to designate the process by which the juvenile court waives its jurisdiction and transfers juveniles to the adult criminal court.

STATUTORY PROVISIONS

Only three of the 51 jurisdictions do not provide for waiver of jurisdiction from the juvenile court to the criminal court. These three are Nebraska, New York, and Vermont.* The fact that New York and Vermont have maximum jurisdictional ages of 16, as low as any permitted in the country, may have a bearing on the lack of a waiver provision. There is less need for the option of waiver if a youth comes under the jurisdiction of the criminal court when reaching the sixteenth birthday. Only one jurisdiction, Connecticut, provides for waiver and also has a maximum jurisdiction age of 16.

Minimum Waiver Age

Most of the jurisdictions state a specific age at which waiver is permitted, although in 10 jurisdictions no waiver age is given, and, as previously mentioned, three States make no provision for waiver. Figure 7 (p. 117)presents the minimum waiver age for the 51 jurisdictions.

In some jurisdictions, there are circumstances in which waiver may be permitted at an earlier age. In Delaware, the age at which a child may be waived drops from 16 to 14 "where child is charged with commission of a felony, after reaching 14, during a period of escape from institutional confinement or unauthorized absence from such confinement" (6, p. 133). In Georgia, the age at which a child may be waived drops from 15 to 13 "in case of a child charged with offense punishable by death or life imprisonment" (3, p. 236). In Kentucky, the minimum waiver of age 16 is changed to that waiver is

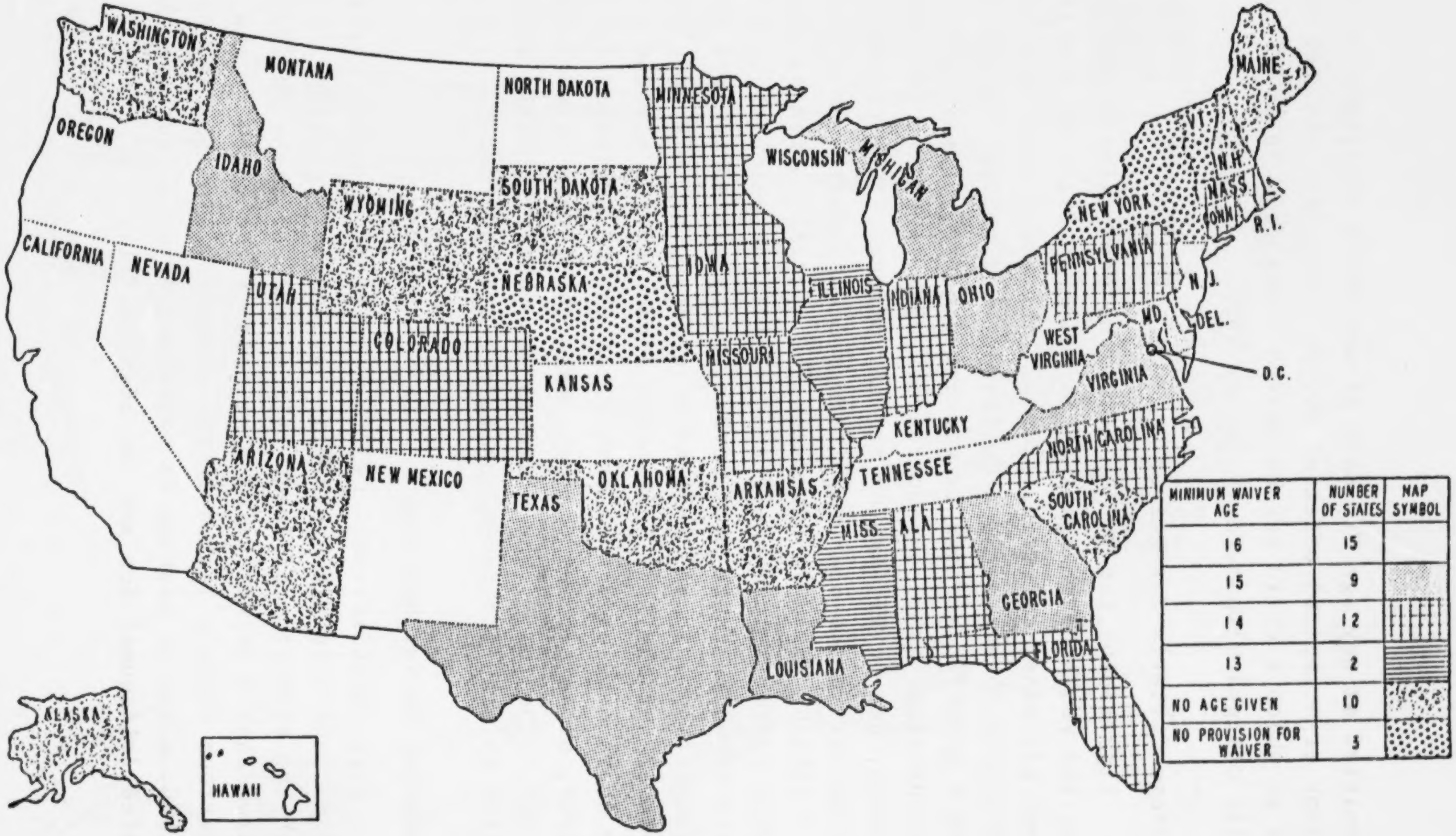
---

*This information is based on a statutes analysis carried out by the National Juvenile Justice System Assessment Center in 1978.

Arkansas is sometimes listed as having no provision for waiver. However, Arkansas Statutes Annotated, Title 45, Section 45-420, 1977, states that "[for] any juvenile charged with a felony or a misdemeanor the judge may in his discretion transfer the case to any other court..."

FIGURE 7

MINIMUM WAIVER AGE BY STATE* :1978


WASHINGTON
MONTANA
NORTH DAKOTA
MINNESOTA
OREGON
IDAHO
WYOMING
SOUTH DAKOTA
WISCONSIN
MICHIGAN
MAINE
VT.
N.H.
MASS.
CONN.
R.I.
NEW YORK
CALIFORNIA
NEVADA
UTAH
NEBRASKA
IOWA
ILLINOIS
INDIANA
OHIO
PENNSYLVANIA
N.J.
DEL.
MD.
D.C.
WEST VIRGINIA
VIRGINIA
COLORADO
KANSAS
MISSOURI
KENTUCKY
TENNESSEE
NORTH CAROLINA
ARIZONA
NEW MEXICO
OKLAHOMA
TEXAS
ARKANSAS
MISS.
ALA.
GEORGIA
SOUTH CAROLINA
LOUISIANA
FLORIDA
ALASKA
HAWAII

MINIMUM WAIVER AGE	NUMBER OF STATES	MAP SYMBOL
16	15	☐
15	9	▒
14	12	▦
13	2	▤
NO AGE GIVEN	10	▓
NO PROVISION FOR WAIVER	3	░

* INCLUDES DISTRICT OF COLUMBIA

Source: 3, 4, 5, and 6

permitted at any age "in case of any child charged with a class A felony or a capital offense" (6, p. 136). And, in New Mexico, the age at which a child may be waived drops from 16 to 15 "in case of child charged with murder" (6, p. 140).

Offense Criteria for Waiver

Eighteen of the 48 jurisdictions permitting waiver require that the youth be charged with a felony. Eight of the jurisdictions add other criteria, such as, the youth must have been previously committed as a delinquent and/or that he/she be charged with a specific serious or violent offense. Finally, 22 of the jurisdictions make no requirements with regard to the nature of the offense, but permit waiver for any offense. The offense criteria for waiver in the 51 jurisdictions are presented in Figure 8 (p.119).

Table 3 (p.120) summarizes the specific offenses used as additional criteria in the eight jurisdictions which require them. These offenses range from murder, as specified in five of the eight jurisdictions, to any indictable offense, as in Rhode Island.

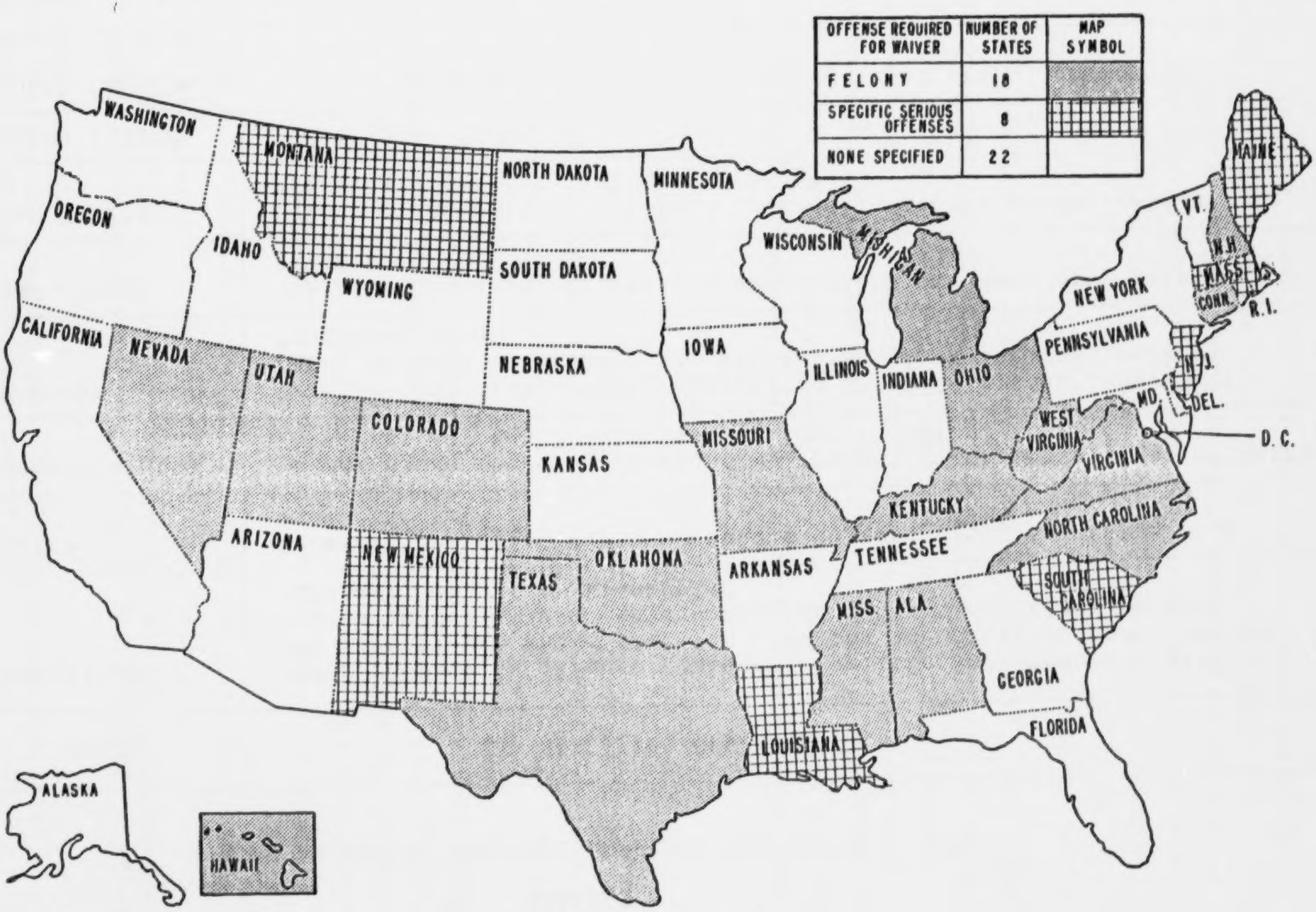
Perhaps the most noteworthy aspect of the offense criteria is the above mentioned fact that 22 of the 48 jurisdictions permitting waiver, or 46 percent of them, make no offense-related requirements at all. Insofar as the statutes are concerned, this makes it much easier to transfer juveniles to the criminal court.

Mandatory Waiver Hearings

Five jurisdictions--California, Florida, North Carolina, Rhode Island, and Virginia--currently have mandatory waiver provisions. With the exception of Rhode Island, each of these jurisdictions requires that a waiver hearing be held if the youth is charged with a serious offense listed in the statutes. In the case of Rhode Island, a waiver hearing is mandatory after a youth has been adjudicated delinquent for any two offenses (1).

FIGURE 8

OFFENSE CRITERIA FOR WAIVER BY STATE*: 1978



OFFENSE REQUIRED FOR WAIVER	NUMBER OF STATES	MAP SYMBOL
FELONY	18	▒
SPECIFIC SERIOUS OFFENSES	8	▦
NONE SPECIFIED	22	☐

WASHINGTON
OREGON
CALIFORNIA
IDAHO
NEVADA
MONTANA
WYOMING
UTAH
ARIZONA
COLORADO
NEW MEXICO
NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
TEXAS
MINNESOTA
IOWA
MISSOURI
ARKANSAS
LOUISIANA
WISCONSIN
MICHIGAN
ILLINOIS
INDIANA
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SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
WEST VIRGINIA
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D. C.
PENNSYLVANIA
N.J.
NEW YORK
VT.
N.H.
MAINE
MASS.
CONN.
R.I.
ALASKA
HAWAII

* INCLUDES DISTRICT OF COLUMBIA

Source: 3, 4, 5, and 6

TABLE 3

STATES REQUIRING SPECIFIC OFFENSES FOR WAIVER: 1978

STATE	SPECIFIED OFFENSES
Louisiana	Armed robbery or offense punishable by life imprisonment; also, for any offense where there is previous adjudication for: second degree murder, manslaughter, negligent homicide, rape, robbery, burglary, arson, or kidnapping.
Maine	Criminal homicide, first or second degree; also, any class A, B , or C offense.
Massachusetts	Felony where there is previous delinquent commitment; also, offenses involving serious bodily harm or threat thereof.
Montana	Criminal homicide, arson, aggravated assault, robbery, burglary, rape, aggravated kidnapping, possession of explosives, sale of dangerous drugs.
New Jersey	Homicide, treason, aggressive and violent offense, drug-related offense.
New Mexico	Felony or assault with intent to commit violent felony, kidnapping, aggravated battery, aggravated arson.
Rhode Island	Indictable offense.
South Carolina	Murder, manslaughter, rape, attempted rape, arson, common law burglary, bribery, perjury.

Source: 3,4,5, and 6

Table 4 (p.122) summarizes the information regarding offense criteria for mandatory waiver hearings in five jurisdictions.

There is one other situation in which waiver hearings may be required. Florida, North Dakota, and New Jersey provide for mandatory waiver hearings on the request of the juvenile or parents.*

"Reverse Waiver"

"Reverse waiver" is a procedure in which youths who have come under the original jurisdiction of the criminal court may be transferred to the jurisdiction of the juvenile court. Upon a motion by the defense, the prosecution, or the court, a hearing is held to determine whether the case might not be heard more appropriately in juvenile rather than criminal court. Five jurisdictions provide for this procedure: Delaware, Florida, New York, Pennsylvania, and Vermont.*

Due Process Requirements

The decision to waive jurisdiction from the juvenile court to the criminal court is of particular importance regarding serious juvenile offenders because of the impact it can have on the process from that point forward. In the often quoted sentence from the Kent decision, "It is clear beyond dispute that the waiver of jurisdiction is a 'critically important' action determining vitally important...rights of the juvenile..." (2, p. 110). Even so, prior to the 1966 Kent decision, "very few States sought to protect the juvenile against procedural arbitrariness in the waiver process" (2, p. 110).

What the U.S. Supreme Court set forth in Kent was four basic due process safeguards for waiver procedures, namely:

> "...If the juvenile court is considering waiving jurisdiction, the juvenile is entitled to a hearing on the question of waiver.

---

*This statute information was identified by the National Juvenile Justice System Assessment Center.

TABLE 4

STATES PROVIDING FOR MANDATORY WAIVER HEARINGS: 1978

State	Minimum Waiver Age	Offenses Requiring Waiver Hearings				
		Murder	Rape	Robbery	Aggr. Assault	Kidnapping
California	16	X	X	X	X	X
Florida	14	X	X	X	X	X
North Carolina	14	X	--	--	--	X
Virginia	15	X	X	X	--	--
Rhode Island	16	Adjudicated delinquent for any two offenses				

Source: National Juvenile Justice System Assessment Center, November 1978.

> ...The juvenile is entitled to representation by counsel at such hearing.
>
> ...The juvenile's attorney must be given access to the juvenile's social records on request.
>
> ...If jurisdiction is waived, the juvenile is entitled to a statement of reasons in support of the waiver order" (2, p. 111).

Presently, most of the 48 jurisdictions require by statute that a hearing must be held before the jurisdiction of the juvenile court can be waived (2, pp. 111-112). In the remaining jurisdictions, one suspects that the requirements for a hearing before waiver is also the practice, whether because of juvenile court rules or policies in a given jurisdiction, case law in the jurisdiction, or simply de facto observance of the _Kent_ guidelines.

These guidelines were further spelled out in the appendix to the _Kent_ decision and the statutes policies, and practices across the country tend to follow them more or less faithfully.* The criteria in the appendix to _Kent_ are as follows:

> "...The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
>
> ...Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
>
> ...Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
>
> ...The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment.
>
> ...The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the [criminal court].
>
> ...The sophistication and maturity of the juvenile as determined by consideration of his home, environment situation, emotional attitude and pattern of living.
>
> ...The record and previous history of the juvenile.
>
> ...The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile

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*For a more complete discussion of the influence of the _Kent_ decision on waiver criteria, see _Part A_, _Legislation_, of _this_ series entitled _A National Assessment of Serious Crime and the Juvenile Justice System: The Need for a Rational Response_.

> (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court" (2, p. 113).

A final facet of jurisdictional requirements has to do with quantity of proof that is required to waive jurisdiction over a juvenile. The law recognizes three general categories of proof: a preponderance of evidence, clear and convincing evidence, and evidence beyond a reasonable doubt. Generally, the requirement for a preponderance of evidence is the standard of proof in civil cases and is the least rigorous of the three. Clear and convincing evidence, used commonly for fraud cases, is a more demanding proof requirement. Finally, evidence which proves a fact beyond a reasonable doubt, used only in criminal cases, is the most demanding proof requirement.

For the waiver process, the vast majority of jurisdictions--45--only require a preponderance of evidence to waive a youth. Three jurisdictions--Arizona, California, and West Virginia--require substantial or clear and convincing evidence for normal waiver procedures.* The more rigorous the burden of proof, the harder it is to waive juvenile court jurisdictions, and the higher the commitment to juvenile rehabilitation.

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*This statute information was identified by the National Juvenile Justice System Assessment Center.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

This paper has reviewed the statutory provisions regarding juvenile and criminal court jurisdiction concerning youth under 18 years of age in the United States. All 51 State jurisdictions have been included in the review (e.g., 50 States and the District of Columbia). Particular attention has been given to waiver because that procedure transfers jurisdiction of youths from the juvenile to the criminal court (or the reverse) and typically involves the serious offender who is the subject of this report.

The jurisdiction of the juvenile court, the jurisdiction of the criminal court, and the circumstances under which waiver are permitted are all determined primarily by age and offense.

JUVENILE COURT JURISDICTION

Normally, the juvenile court will have jurisdiction over youths under 18 years of age. Eighteen is the maximum jurisdictional age in 39 jurisdictions. However, eight jurisdictions have a maximum age of 17, and four have a maximum age of 16. The minimum age at which children come under the jurisdiction of the juvenile court is not so clear. In 45 jurisdictions, there is either a common law presumption of the age of seven or no age specified. In four jurisdictions, the minimum age is 10; and in two jurisdictions the minimum age is seven. In the remaining six jurisdictions, the age is specified as seven or 10.

It is the normal practice that the time when the jurisdiction of the juvenile court attaches is the time the offense takes place. This is true in 37 jurisdictions. However, in the remaining 14 jurisdictions, the jurisdiction does not attach until the time of detention or filing of charges. Delays in these 14 jurisdictions can thus shift a youth from juvenile to criminal court.

In 32 jurisdictions, the juvenile court maintains jurisdiction, once established, until the age of 21. The age limit for duration of jurisdiction is younger than 21 in 18 jurisdictions (usually when the maximum jurisdictional age is lower). In one jurisdiction, it extends to age 23.

Finally, with regard to juvenile court jurisdiction, the normal situation is that the juvenile court will have exclusive original jurisdiction over youths under the maximum jurisdictional age. However, 10 jurisdictions do not do this and provide instead for concurrent jurisdiction between the juvenile and criminal courts.

CRIMINAL COURT JURISDICTION

There are significant numbers of youths under 18 who come under the original jurisdiction of the criminal court. This is because four jurisdictions provide for criminal court jurisdiction as soon as the age of 16 is reached, and eight others provide for criminal court jurisdiction at the age of 17. There are few jurisdictions which provide separate facilities and treatment programs for the persons under 18 who are in the adult systems.

Another group of under 18 youths who find themselves in the adult criminal court consists of those accused of certain offenses specifically excluded from the jurisdiction of the juvenile court. In the 10 jurisdictions where this is so, the offenses include murder, any crime punishable by death or life imprisonment, and certain other serious felonies.

Finally, concurrent jurisdiction between the criminal and juvenile courts is provided for in the statutes of 10 jurisdictions. Most of these specify concurrent jurisdiction only in cases of serious felonies, but two of the jurisdictions allow it for any offense and at any age. The role of the prosecutor is crucial in determining which court will have authority in the situation of concurrent jurisdiction, and the presumption is that the original jurisdiction will fall to the criminal court in the more serious cases.

WAIVER

Waiver, the procedure whereby the juvenile court transfers jurisdiction over a youth to the criminal court (or the reverse), is of vital importance where the serious juvenile offender is concerned. All except three of the 51 jurisdictions provide for waiver.

When the age and offense criteria for waiver are considered, the special relevance of the procedure to serious juvenile offenders can be seen. Usually waiver is used for youths over a certain minimum age--16, 15, 14, or even 13--who are accused of felonies, and who are considered no longer amenable to treatment within the juvenile justice system. There are, however, 10 jurisdictions which do not require a minimum age for waiver.

Twenty-six of the jurisdictions permitting waiver require that the offense be either a felony or a specified serious offense, while 22 jurisdictions do not specify an offense. Five jurisdictions provide for mandatory waiver hearings where juveniles are accused of specified serious offenses (or, in one case, have two previous delinquency adjudications).

In almost all of the jurisdictions, a waiver hearing is required, and the guidelines for waiver in the various jurisdictions of the country are generally derived from the *Kent* criteria.

Waiver of jurisdiction from the juvenile court to the criminal court is not a common procedure. According to an unpublished study by the National Center for Juvenile Justice, 52,975 youths were waived in a sample of 584,116 juvenile court cases, or less than 10 percent (8, p. 34). The study was based on a sample of 13 States comprising "41% of the total child population at risk" in the United States (8, p. 6).

It should be noted that not all cases waived to the criminal court result in adult trials or adult correctional treatment for the juveniles involved. Charges may be dropped or cases dismissed because of insufficient evidence or lack of seriousness.

JURISDICTIONAL ISSUES

By its nature, this report has been a review of statutory provisions in the U.S. which govern jurisdiction over youths under 18. It is most important for the reader to keep in mind, however, that the statutes by themselves do not reveal a complete picture of the actual policies and practices of the jurisdictions involved.

A single illustration will show the information needed beyond the relevant statutes. Arizona has a maximum jurisdictional age of 18, no minimum waiver age, no offenses excluded from the jurisdiction of the juvenile court, grants exclusive original jurisdiction to the juvenile court, and provides no offense criteria for waiver. This permits them to waive any juvenile of any age for any offense. This fact, combined with the lack of information on how often waiver is actually used, means that little is known about how the serious juvenile offender is handled in Arizona. To learn that, one needs to know the numbers of juveniles waived, their ages and offense histories, their dispositions, and the average length of commitments. A similar situation exists in the other 50 jurisdictions. It is necessary to obtain a great deal of information beyond the statutes themselves in order to learn how serious juvenile offenders are actually handled. This information is rarely available in convenient form, if at all. Information on the use of waiver procedures is especially hard to obtain.

Recognizing, then, that there is a disparity between statutory provisions and implementation of statutes, here are some of the jurisdictional issues which arise concerning serious juvenile offenders:

- Maximum Jurisdictional Age for Adjudication

  Should the maximum age for jurisdiction of the juvenile court for adjudication be uniform at the eighteenth birthday?

- Time at Which Jurisdiction Attaches

  Should the time at which juvenile court jurisdiction attaches be fixed uniformly as the date of the offense? This would minimize waivers to criminal court that result from processing delays.

- Criminal Court Jurisdiction Over Persons Under 18

  Should there be provisions for separate processing and facilities for persons under 18 who come under the jurisdiction of the criminal court or adult correctional system?

- Offenses Excluded

  Should juveniles over 14 who commit those offenses determined to be serious by a jurisdiction be tried as an adult without a waiver hearing?

- Concurrent Jurisdiction

  Should prosecutors have the option to process a person under 18 through either the adult or juvenile court depending on the offense and offender history?

- Waiver

  When juveniles are waived to criminal court, are their sentences comparable to those received by adults for the same offenses?

- Should criteria and process for waiver be standardized for all jurisdictions?

- Time at Which Jurisdiction Ends

  Should jurisdiction of the juvenile corrections system end uniformly at the twenty-first birthday?

An overarching issue is whether the jurisdiction of the juvenile court should be limited so that more serious juvenile offenders are handled in the criminal court or the resources of the juvenile court should be strengthened to provide more just and efficient treatment for those youths who are beyond waywardness.

CONCLUSIONS AND RECOMMENDATIONS

The expansion of options for limiting the jurisdiction of the juvenile court over serious juvenile offenders indicates a question in the minds of many regarding the capacity of the juvenile justice system to handle these troublesome youths. As the Twentieth Century Fund report says:

> State law can provide for these "deep-end" cases in three ways: by lowering the maximum age of juvenile court jurisdiction (typically to under sixteen or seventeen), by increasing the sentencing authority of the juvenile court, or by providing for the transfer of cases to the criminal court (9, p. 10).

Based upon the information collected during this assessment, the following recommendations seem appropriate:

- The maximum jurisdictional age of the juvenile court for adjudication should be the eighteenth birthday and for corrections, the twenty-first birthday.
- The minimum jurisdictional age of the juvenile court should be 10.
- The time at which the jurisdiction of the juvenile court attaches should be the date of the offense.
- The juvenile court should have exclusive original jurisdiction over all youths under 18.
- No offenses should be excluded from the original jurisdiction of the juvenile court.
- Concurrent jurisdiction between the juvenile and criminal courts should not be allowed.
- Provision for waiver of jurisdiction over juveniles under 18 to the criminal court should be made in all jurisdictions, with a minimum waiver age of 16, a list of serious or repeat offenses required for waiver, and complete due process protections guaranteed.

APPENDIX A

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PART C

PROGRAM INTERVENTIONS

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EXECUTIVE SUMMARY

In this report, 14 programs for the intervention and treatment of serious juvenile offenders are described together with their critical evaluations. The programs are roughly ordered according to their comprehensiveness and differentiation, beginning with those attempting large-scale change of the juvenile justice system and ending with small-scale specialized projects under State, local, and private sponsorship.

All of these with one or two exceptions reflect the movement towards community-based correctional programs for juvenile offenders. Reforms in Massachusetts went farthest in this direction. Claims of success for its programs rested on their great diversity which allowed maximum individualization of treatment. The only program which evaluators asserted to reduce recidivism significantly was UDIS in Illinois, which was believed to have a "suppression effect" on further juvenile misdeeds. However, the statistical basis for the claim is questioned.

Generally, exemplary programs tended to revolve around remedial education, vocational training and placement, plus recreation, with accessory counseling in one-to-one relationships and in groups. No distinctive claims for success were made for these projects. The same was true for more specialized programs such as Outward Bound and Florida Oceanographic.

Issues raised by the program survey concern the utility of the medical model, system versus service delivery change, institution versus community-based treatment, and methods of evaluation. UDIS and research on programs in Massachusetts raised questions as to what "community-based" means and whether closed residential treatment needs to be retained for residual hard-core, violent offenders.

In line with the discussion of issues, a number of tentative recommendations seem justified at this time. These are listed roughly in order of their presumed importance:

1. A number of analytical studies should be commissioned to explore possible applications of non-medical models of intervention.
2. Continued support should be given to broad-based, social/political studies of intervention of the sort carried on by the Harvard Research Group, but with additional emphasis on ethnographic and microcosmic aspects of the process.
3. Careful consideration should be given to intervention with hard-core, violent offenders by means of small, closed residential centers, using a number of different models.
4. A law center should be commissioned with support of the legal profession to study how to reconcile maximum experimentation in intervention with accountability and protection of juvenile rights.
5. The meaning of community-based intervention needs both analytical analysis and empirical investigation.
6. Youth advocacy is a promising alternative which merits expanded funding and support.
7. Further experimentation with the use of paraprofessionals and community workers in intervention should be supported.
8. The problem of high and disproportionate unemployment among minority group teenagers should be recognized, especially in devising aftercare programs.

CHAPTER I

INTRODUCTION

VIOLENT JUVENILE CRIME AND PUBLIC POLICY

This report will discuss recent programs which have been established for the control and rehabilitation of serious juvenile offenders. The continuing presence of serious juvenile offenders in society indicates that traditional controls which ordinarily limit and structure aggression and destructiveness are not working adequately.

In less complex societies of the past, aggression and sex offenses were minimized by the operation of preventive controls. Bad feelings between individuals were structured by group action so that risks of injury or death were diminished. Rape and other sex offenses were controlled by gossip, ridicule, and physical segregation of the two sexes (11, pp. 222-227). Those who failed to respond to ordinary social controls and persisted in destructive behavior were banished or put to death. Among early Eskimos, for example, tyrants (often murderers) were killed by group action which was sanctioned by common agreement of the whole community.

Such forthright and severe alternatives are not likely to be given more than passing consideration by societies of the West. The high values placed on life and individual freedom all combine to narrow the choices of policymakers concerned with reducing crime and delinquency.

The problem is made complicated by a basic conflict. First, death, major injuries, extensive damage, and severe loss from crime are serious to any society. Yet, when such destructive acts are committed by minors, the disposition of their cases is difficult because their immaturity often disposes adults to minimize punishment for such deviant behavior.

The age at which full responsibility for deviant acts is attributed to juveniles--and the nature of controls for those deemed not fully responsible--have never been determined satisfactorily. Since the beginning of the Twentieth Century, power to do this has been delegated to the juvenile court acting in a discretionary manner. This institution was widely hailed as a solution to the problems of children and youth and for a number of decades its pretensions to treatment and rehabilitation were accepted without much question.

In time, disillusionment with the juvenile court and the possibility of treating delinquents, either under its auspices or in institutional settings, set in. Appellate court decisions sought to narrow its jurisdiction but the older parens patriae philosophy of the juvenile court by no means lost all of its partisans. An explosion of diversion projects in the 1960's and early 1970's gave further substance to the belief that errant children and youths might fare better by what has been called "radical nonintervention" (14), meaning that they should be handled by bypassing the juvenile court. But, in time, doubts were expressed about diversion programs as being more in name only than real in operation. Meantime, movements have emerged in such States as Massachusetts, California, and Pennsylvania to deinstitutionalize prison and training school populations, although a national survey has questioned whether overall community-based programs are, in fact, supplementing institutional care (15).

Emerging policies of many States, as well as of the Federal government, favor community-based treatment of all but the more serious or dangerous juvenile delinquents. But whether this movement to local corrections can be grounded in solid knowledge and research findings as opposed to emotional hopes and optimism remains to be seen. The matter is clouded by surveys of the results of large numbers of treatment projects which so far yield little conclusive evidence that any of them work. Hence, the very idea of treatment has been called into question. The state of uncertainty about the effectiveness of treatment in the traditional rehabilitation model is reflected in the recent, more qualified vocabulary of some correctional workers, who prefer to speak of "intervention," "reintegration of offenders" and "community alternatives."

Strasburg captures quite well the state of uncertainty and confusion about juvenile corrections (49, p. 3):

> New approaches are proposed and tried with increasing frequency, often moving the system in contradictory directions. Harsher penalties and more diversion are called for at the same time. California moves to transfer responsibility for juvenile corrections to local jurisdictions while Florida moves to centralize its correctional system. The New York State Legislature attempts to give judges more control over juvenile dispositions as Kentucky passes a law to diminish judges' roles in that area. Alaska begins to embrace the rehabilitation model just as California is abandoning it. Everything seems to be going in circles. Nothing seems certain, proven, accepted.

One controversy stands out and overshadows the confusion and disagreement about what direction juvenile corrections' policies should take. This has to do with violent crimes committed by juveniles. Social science research has determined that although serious offenders may be relatively small in numbers, nevertheless they contribute very heavily to the absolute incidence and proportionate amount of crimes committed by juveniles (16).

An insidious policy dilemma exists, to wit: how can a policy which is geared to normalizing the deviance of children and youth through noncoercive, open, mediational type programs be reconciled with an obvious need to restrain, keep under close surveillance, and coerce when necessary the small but highly destructive population of juveniles who have not or will not respond to normalizing programs. Whether social science theory can help in resolving this policy dilemma is unclear at this point because so little theoretical work has been done on questions of programmatic treatment. Consequently, that which follows is necessarily speculative.

LABELING THEORY

While diversion, deinstitutionalization, and community-based rehabilitation are not necessarily products of the labeling theory of deviance, their underlying rationale is certainly consistent with the theory. Furthermore, the theory has been used after the fact to justify the diversion and deinstitutionalization movements. Jerome Miller, for example, argues that youths in programs and institutions who fail or "bomb out" as he puts it, often are socially diagnosed as "dangerous" in response to frustration they provoke in staff, largely as a means for eliminating or rejecting them from programs. As a result, cases of simple street violence are escalated into "dangerous," giving rise to treatment or custodial systems that "over predict" and "over incarcerate" those so labeled (37, pp. 54-59).

This comes close to saying that there are no "real" instances of juvenile violence, or that primary violence once escalated to dangerous levels is reversible by removing restrictive social controls. Moreover, it perpetuates the tendency to see labeling theory exclusively in negative terms or as inevitably producing secondary deviance (8, pp. 74-84). Granting the unanticipated amplification of deviance which punitive social control and labeling _may_ produce, nonetheless there could be a positive use of labeling. It may be used deliberately as part of programmatic policy. Thus, for some serious delinquents unequivocal definition of what they represent to others or to society may be a necessary antecedent to change and rehabilitiation. Giving them a label as "serious" may in certain types of controlled settings clarify identity and status in such a way as to make for desirable change.

In this sense, labeling theory may be synthesized with deterrence theory, supplying a cognitive element that clarifies choices between unacceptable and acceptable lines of activity and probable consequences of the choices. Programs then become means or methods for pursuing one line of change once choice is made. Presumably, they can be evaluated in terms of the extent to which they single out and seek to convey their meaning for individuals who are subjects of change. How and when labeling of delinquents should be done needs investigation. Murray, in testimony before a Congressional committee, asserted that it should be done "long before the average 13 arrests boys in the UDIS evaluation had accumulated" (41).

The only other social science theory worthy of comment in relation to its applicability to delinquency treatment comes from Empey's essay proposing that a working model for this purpose should be derived from an explanation of why some juveniles become repeat offenders. He opts for a theory of structurally induced strain which leads to identification with delinquent peers. Given this, he states that the target for intervention and change should be the delinquent group (4). But whether the causes of deviant behavior are those which produce change once a chronic pattern of delinquency emerges is debatable. The peer group certainly is crucial in stimulating change, but its influence somehow must be tied to the process of change itself in which symbolic interaction plus definitions of the situation and the self figure importantly.

CHAPTER II

PROGRAM DESCRIPTIONS

The discussion of treatment programs from the point of view of the abbreviated science theory presented here at best can only be partial or incidental to whatever relevant facts are included in reports and evaluations. It is not possible to order the programs in terms of a theoretical perspective. Given this, programs were selected to discuss which offered a broad range of differentiation. This begins with large scale programs designed to alter the juvenile justice system and proceeds to small scale treatment enterprises which take the form of limited experiments imposed within the formal correctional system or those organized more adventitiously within communities. Some of these are funded as exemplary programs or models. The last group of programs receiving attention are residential programs for serious offenders either intramural in nature or based in the community.

MASSACHUSETTS REFORM: TOO MUCH TOO SOON?

Events in Massachusetts beginning in 1969 furnish an opportunity for the study of large scale innovation and change in correctional systems. The most significant feature of the reforms was a swift, wholesale evacuation of juvenile delinquents from institutions and their placement in group homes, with foster parents and in-home care. Treatment services were obtained largely by contracts with existing or newly organized agencies. While much of this reflected pragmatic adaptation, Jerome Miller, who was chosen by a reform-minded governor to be Director of the Department of Youth Services (DYS), was guided by some well-defined ideas. These were: (1) the belief that institutional custody was inevitably destructive for youthful inmates, and (2) a conviction that the analogue of upper middle class methods for dealing with their problem children could be devised through the purchase of services for delinquents of the lower classes.

Beyond this, Miller was much taken with the possibility of installing therapeutic communities as a treatment module. This he initially tried to do within the existing juvenile institutions, importing the creator of the method, Maxwell Jones, from Britain to retrain staffs (7). It was the resistance of staff people to this move that so frustrated Miller and led him to his dramatic action of closing the State's juvenile institutions, then replacing them with alternative local programs administered through seven regional offices.

Programs (1, 2, 3, 12, 14, and 45)

In the years which followed, youngsters from DYS were placed in over 250 programs throughout Massachusetts and other States. In October of 1975, these totaled 2,200 youths. However, most of them were concentrated in about 50 programs (32, p. 6). Existing private agencies offered some of these; others were organized externally and funded in response to DYS needs, plus five to seven which DYS created of its own.

In devising or contracting for programs, emphasis was placed on the desirability of client participation and democratic planning. By 1974 this was affected by State legislation which the previous year provided for CHINS (Children in Need of Services) statutes governing the disposition of neglected children and status offenders. One result was that a number of offenders previously institutionalized were placed in facilities along with nondelinquent children. This was encouraged by "referrals" of cases from juvenile courts to DYS, in some cases without formal adjudication.

System administrators specified "levels" of care, ranging from that for youths with simple parole status through nonresidential care, foster homes, group homes, residential schools, and finally "intensive care." Nonresidential day care was considered to be the most innovative of DYS programs and in 1975 it absorbed the largest number of the Department's charges. This took two forms: street programs with counselors who continuously monitored small caseloads; and alternative schools with small, flexible "open classroom" arrangements. These resembled continuation schools which have existed for some years in California.

DYS leaders had limited success in getting their youths into boarding schools used by children of middle and upper class families in the State. However, many were placed in other residential schools. These had similarities to Approved Schools long used for delinquents in Britain but which now are changed to community schools. They have headmasters and dormitories, and are geared to disciplined teaching and work procedures ultimately leading to graduation with a high school diploma.

The Serious Juvenile Offender in Massachusetts

Juvenile offenders continued to be held in detention in Massachusetts. Those from the Boston area were held at a number of centers, then diverted into eight shelter care facilities around the State. Serious offenders also were detained in foster homes, plus which a substantial number were placed through private agencies that operate special detention programs.

Although locked facilities apparently were anathema to the Massachusetts reformers, nevertheless some provision had to be made for those juveniles who could not be absorbed readily into community programs. The second Director of DYS established special programs given the medicinal designation of "intensive care." Classification was employed to distinguish rational, instrumental offenders, such as thieves, from those given to mindless violence, e.g., attacking passersby with razor blades. Those in the first category were turned over to ex-cons and street workers;

those in the second were put under control of professional clinicians, psychologists and psychiatrists, who relied on individual and group counseling for treatment.

Programs in the various intensive care centers incorporated education, arts and crafts, vocational training, sports, and games, community meetings, "trust" walks, sex counseling and family counseling. Topical discussions in the group tried to restate in various ways the "concept" around which the center was organized. A case manager monitored each case and contracts were utilized as a case management tool, this to insure accountability from both youths and staff. These were indicated for use at each point where a "transaction" took place, having the added hoped-for increase in participation by youth clients.

Serious juvenile offenders also were assigned to halfway houses which conducted concept programs. These sought to organize treatment systematically around one or two central ideas and were symbolized by a distinctive name, usually given to the house or location where it was conducted. They were sponsored variously; Hyde Park was under the aegis of DYS; Liberty House I and II were privately administered in Danvers, Massachusetts. An out-of-state residential facility, Elan, also received DYS intensive care type cases. These programs employed variations of behavior-modification and encounter-group methods.

Problems, Criticisms and Evaluations

While the Massachusetts reforms stirred hot controversies on various issues and in different quarters, the more significant conflict revolved around the intensive care and concept programs established to minister to the needs of serious offenders. Criticisms and attacks came from within DYS as well as from the outside. The original Intensive Care (IC) center at Andros was charged with having an unqualified staff, ineffective program and a lack of any real security, capped by allegations of sexual irregularities by staff and existence of an internal drug traffic. Thus, in spite of some good aspects of the program, the problems seemed to outweigh the advantages.

Other IC centers had comparable difficulties and several concept programs were closed down. The criticism of mismanagement, "permissiveness" in the early release of juveniles with violent offense histories, lack of security or of sufficient secure facilities were hard to refute (32, pp. 5, 12, 17). An internal evaluation team attacked several of the concept programs based on encounter sessions, confrontation and behavior modification as being cruel, punitive, and denying juveniles' rights. It was also found that IC programs failed to use contracts as planned and they received cases better handled in other programs. A number of placements were primarily for short term security rather than for treatment (27).

Overall Evaluation

A preliminary study using cohort analysis showed that, from 1969 to 1974, recidivism in the DYS regions did not increase, but neither did it decrease. There was considerable variation in recidivism rates between the regions. In addition, recidivism rates for girls increased. This was taken to reflect the special difficulties of establishing workable programs and controls for females under corrections.

Spokesmen for the Harvard evaluation group concluded that beneficial effects were achieved "for the vast majority of youth being served." Ohlin stated in this connection that neither high quality nor innovative programs were developed, but that the sheer numbers of different programs gave Massachusetts more flexibility in programming to individual needs than is possible elsewhere (32, p. 3).

UDIS: INSTITUTIONAL DIVERSION IN ILLINOIS

UDIS is an acronym for a program entitled Unified Delinquency Intervention Services, set up in 1974 to serve the needs of the serious delinquent in Cook County, Illinois. It was the outgrowth of an attempt by the Governor and administrators in the State to bring about massive deinstitutionalization of juvenile corrections comparable to that which took place in Massachusetts. The Illinois movement was fathered by Jerome Miller, who was brought from Massachusetts to become Director of the Department of Children and Family Services (DCFS). It was given a large assist by David Fogel who was recruited to become head of the Illinois Department of Corrections (DOC).

Reform was supposed to come about by transferring the Juvenile Division of DOC to Miller's Department. But the reformers had to settle for a compromise in which the UDIS program was located in DCFS.

The plan for UDIS was worked out with the people in the Chicago Juvenile Court, DOC staff, and some of Miller's appointees. Meantime, the attempt by Miller to reclaim juveniles from DOC and put them into families only partly succeeded, and he left Illinois before UDIS began its operation.

The UDIS Population

UDIS, far more than was true with Massachusetts reforms, was directed explicitly at the chronic, serious delinquent who otherwise would have been placed in an institution. This was inherent in the organization of its procedures, which required a juvenile court judge to decide between a recommendation for UDIS placement or commitment to DOC. This latter alternative of selecting a particular placement was not within the power of judges in Massachusetts and after reform was precluded by closure of all of its juvenile institutions. In effect, UDIS acquired cases which probation officers regarded as due for institutionalization but still held some promise of change for the better. Many were cases which previously fell into a "suspended commitment" category. In more concrete terms, a UDIS client typically was 16 years old, having had a first arrest at 12, and an average record of 13 arrests. These included six theft offenses, two with injury or threat of injury, the rest being made up of narcotics and status offenses. This was somewhat less serious than the record of the average DOC commitment (42, p. 55ff).

UDIS Principles

Three principles served as guidelines for UDIS operations. One was first priority for the "least drastic alternative." This meant choice of the disposition which departed as little as possible from the youth's "normal" situation. Keeping the youth at home where possible, provision of local rather than remote services, and allowing maximum freedom of movement were the ingredients of non-drastic alternatives.

The second guiding principle was to move the youth out of the juvenile justice system fast, in no more than six months. This was to counteract the tendency of agencies to prolong their control over youths they served.

The third key principle of UDIS was individualized programming. This called for detailed investigation, an effort to acquire a fresh perspective on the youth's situation, and attempting to work from the client's strengths rather than his deficiencies. Continuous monitoring was to be done by a Case Manager, who could make quick changes and adaptations as needed.

Although not exactly a principle, the UDIS plan called for extensive, in-depth data collection and careful evaluation of program results. This was to be a comparison of outcomes of baseline cases and DOC cases with those of UDIS. The Northwestern University Center for Urban Affairs was given the task of conducting computerized monitoring and tracking of cases. This provided feedback to an Advisory Board.

How the Program Worked

Referrals to UDIS came from probation officers who contacted Case Managers. If they found the youth eligible, he was recommended for the program at the next court hearing. If approved by the judge, the Case Manager worked up a plan with help of the probation officer, representatives of service agencies, the family, and finally the youth himself, who entered into a contract to "stay out of trouble." The Case Manager brokered services for his cases, located and coordinated services, monitored the case progress and work of the vendors, and prepared reports for the court. Termination of a case meant failure, to be followed by either commitment to DOC or return to regular probation.

UDIS had a small staff made up of young dedicated workers. It comprised a Program Coordinator, two Case Management Supervisors, two Resource Monitors, a Court Representative, eight Case Managers, and four secretarial workers. Vendors' contracts were negotiated by the Program Coordinator, who also handled recruitment.

Motivation for court support of UDIS lay in the fact that the juvenile court judge kept jurisdiction over a case, lost when a DOC commitment was made. The probation officers favored UDIS because they saw in its procedures means for reducing their caseloads.

Vendors

Vendor services available to UDIS Case Managers fell into six general categories: advocacy, counseling, educational/vocational group homes and foster care, rural programs, and intensive care.

These were ordered in a rough continuum from the least to the most drastic alternative. Rural and intensive care typically were residential and removed from the community.

The most commonly used service was advocacy provided by twelve agencies whose workers represented youths vis-a-vis the juvenile justice system and other agencies. The role of the UDIS advocate was likened to that of an aggressive middle class parent who negotiates with police, makes assurances, obtains a lawyer and engages a clinician to protect his offspring from drastic official action. Advocacy agencies claimed to make more intensive personal contacts and exercise more surveillance than is possible through probation.

How Fared the Principles?

Individualized treatment was tied to assessment, but to many UDIS staff, this implied the medical model with diagnostic labels and assumptions that the youths were defective in some way. In practice, assessments proved to be skimpy and failed to meet minimal standards, with the result that they were eliminated in 1977. Thereafter, Case Managers took the lead in obtaining needed information. Insofar as changing placements is a measure of individualized programming, Case Managers performed well.

About half of the UDIS sample were first placed in a least drastic alternative, i.e., at home with advocacy and counseling, around 16 percent got placed at level II, group homes or foster care, and 29 percent were placed at level III, residential establishments (42, p. 15). However, subsequent placements moved downward more than upward. The number of prior offenses and prior record did not affect the decisions in these cases. In a number of cases, the court more or less directed this case movement by ordering residential placements.

The ideal of rapid movement of youths in and out of UDIS suffered; less than half of them left the program within six months. Thirty-one percent stayed from seven to nine months and 25 percent were in the program for 10 to 19 months. While various contingencies explained this, it was also true that UDIS workers tended to cling to their assignees, particularly when it appeared that services were having a beneficial effect.

Evaluation

Internal comparisons during an evaluation by the American Institute of Research (AIR) of UDIS, DOC, and baseline case outcomes on various recidivism measures, showed some differences according to length of time after entries and releases. For "any police contact" and "reappearance in court" at 12 months, differences were small, and over one-half of all three groups recidivated. However, on the scores of violence related offenses, UDIS cases had the most favorable outcome (42, p. 131f). Judged by reinstitutionalization, the UDIS sample at six months after exit had a recidivism rate three times that of DOC cases. More generally, internal comparisons concluded that UDIS outcomes were no worse than DOC's. However, if commitments from UDIS to DOC had been included in the tally, UDIS outcomes would have been poorer than those of DOC.

The finding which most impressed AIR evaluators was the precipitous drop on all recidivism ratings before and after entry into programs for all three samples (42, p. 161ff). This the evaluators held to be valid even after considering that results might have been caused by sampling bias or by a statistical artifact. The recidivism decreases were attributed to what evaluators call the "suppression effect" of both DOC and UDIS experiences.

A reanalysis of UDIS data in a report to the Illinois Department of Corrections flatly contradicts the claims of the AIR report. The critical reanalysis concludes that the suppression effect is completely explained by three tendencies of delinquent populations: regression, maturation, and case mortality. Regression is the tendency for a second sample of classified events to regress towards a mean. In this instance, UDIS cases simply recorded an inherent tendency for recidivism to decrease at a different point in time. Maturation is the tendency of youths to phase out of delinquency as they reach late teen age. Both the UDIS and DOC samples had peaked in delinquent activity prior to their program entries so the study samples simply picked up two time points in a downward trend. Case mortality refers to the tendency for sample cases to get lost, so that study samples are based on progressively smaller numbers. The reanalysis argues that the more serious, likely-to-recidivate UDIS cases get lost and do not appear in the recidivism rates. There were 103 "missing cases" which remained incarcerated and could not contribute to the post-discharge recidivism records. In addition, more serious cases were arrested early after release and then reincarcerated, thus disappearing (34).

Whether the suppression effect of UDIS processing was or is a valid finding must remain problematical (24, p. 57). However, one hypothesis advanced to account for the suppression of delinquency commands attention, namely, that rational choice was significant in explaining why a portion of UDIS youth gave up their delinquent ways or reordered their behavior to avoid further police contacts (42, Ch. 12). Thus, the AIR evaluators state that the definitions of the situation and manner of handling of UDIS cases for the first time made serious punishment, i.e., commitment to DOC, credible. It became a probability rather than a possibility as it had been during processing at the juvenile court level. At the same time, the means of avoiding this contingency were made available through UDIS.

This further suggests that the deterrent effects of punitive law must be made apparent at points of social interaction in a social organization in terms of specific situational alternatives, rather than through a presumed generalized influence of a law or judicial pronouncement on an unspecified population of delinquents. Perhaps it can be said that the certainty of punishment (DOC) became unequivocally clear for a number of UDIS youths and so led to constructive choices on their part. This is consistent with an older qualitative analysis of the process of maturing out of delinquent careers revealing that phasing out was facilitated by the delinquent's awareness around age 17 that police and courts would no longer define him as a minor and most probably dispatch him to a State institution if he persisted in further deviance (34).

There was little difference between the per capita costs of UDIS and DOC, both being around $12,000 per program intervention period (42, Ch. 11).

CENTER FOR COMMUNITY ALTERNATIVES--A BROKEN PLAY

The Center for Community Alternatives (CCA) (35) is best understood as something of a crash program growing out of an order by the Attorney General of Pennsylvania in April 1975 which terminated commitments of juveniles to the Camp Hill Prison. This became effective in the following August. Dissatisfaction and criticism of the situation there had been voiced for a number of years and, in 1973, a Governor's committee recommended that facilities for alternative placements be created. In 1974, the Governor invited the previously mentioned Jerome Miller to become his aide, with the idea that he might spark moves to deinstitutionalize juvenile corrections as he had done in Massachusetts and Illinois. After his arrival, Miller condemned Camp Hill as a public disgrace and then set about to obtain funds to house and treat elsewhere the nearly 400 youths at the prison. However, shortly after submission of a grant application for this by the Department of Public Welfare (DPW), the Attorney General issued his order to end commitments to Camp Hill.

Consequently, the proposal had to be modified forthwith. Its authors decided that the most efficient way to deal with the urgency of the problem was by the purchase of services. Accordingly, the DPW would first establish then enter into contracts with a non-profit corporation to supply needed services and facilities. It was thus that the CCA came into being charged with removing Camp Hill youth and also making arrangements for those who otherwise would be committed there. In order to do so, the following were required: (1) an organizational structure; (2) assessment of the needs of juveniles at Camp Hill; (3) emergency relief services for Camp Hill removals; and (4) development of new placement programs.

Organization similarities of CCA to the Massachusetts DYS and UDIS in Illinois appeared in the regionalization of offices, establishment of Court Liaison workers, Case Managers, and resources developers. The original format was short-lived due to a fiscal crisis in 1976 which made it necessary to absorb CCA into the existing DPW organization under a newly created Office of Youth Services and Correctional Organization. The regional offices of DPW took over the planned functions of CCA but combined them with the administration of institutions and licensing/inspection of child care programs.

Case selection criteria, as well as new procedures, were needed to take on new referrals along with transfer of Camp Hill cases. To be eligible for CCA, youths had to be 15-1/2 years of age with findings of homicide, rape, indecent assault, or have a history of repeated offenses, or be a candidate for bind-over to adult court. The assessment of Camp Hill cases was arranged by contracts with individual consultants and agencies; continuing assessment of referrals was to be the responsibility of mobile teams in each region. Court liaison officers were assigned to present treatment plans to judges, followed by revision of the plans until agreement was reached.

Creating a network of services was to follow a Regional Resource Development Model. This subsumed an Intensive Care Unit, Community Residential Center, Community Advocate Program, Supervised Living (foster care), Outward Bound (wilderness living), and Purchase of Care. The latter included vocational training, special education, psychotherapy, family therapy, and college roommates.

Evaluation

Evaluation of CCA necessarily has to be restricted to its immediate goal of transferring Camp Hill youths into community facilities and the development of a network of services. On the first item, the project was successful, although case assessments were slow in coming in and some youths had to remain in detention for some time pending placement, one for three months.

The evaluation showed that achievement of services' goals varied among the four DPW regions. Needs assessment teams were operational in all areas, as were community advocate programs and purchase-of-care arrangements. However, security units got set up in only two regions, as was true for supervised living programs. Likewise, only two regions had structured group homes. The Outward Bound program existed in all regions but was utilized in only two of them.

There are negative things that were said about CCA. Difficulties appeared in setting up security units, especially at Newcastle, where assaults and runaways occurred, climaxed by the inmates taking over control at one point. Overcrowding also became a problem there. Fiscal mismanagement was considerable for the overall project. The Review Panel for the project (which was supposed to monitor and control quality of services) made a number of stringent charges and was eventually dissolved by DPW. The most damaging criticism made by the Panel was that CCA failed to establish credibility with judges of the State. Behind this was the fear that power of disposition of juvenile cases would pass from their hands to DPW or CCA. For this reason, some judges sent few or no referrals to CCA.

Harsh criticism of CCA in good part must be discounted given the short period it had to accomplish its tasks and the budget cutbacks it had to adapt to. Moreover, one service innovation, the Pennsylvania Youth Advocate Program, was singled out as notable by the Auditor General's Report. This Program engaged young persons, primarily college students, including those in graduate school, at $25.00 per week to share informal, leisure time activities with Camp Hill youths, who received $5.00 per week from their advocates. Advocates were more persistent in seeking jobs for their assignees than probation officers, and half of their 150 clients were employed within nine months. Female advocates seemed to interact more easily with Camp Hillers than male advocates. All of which bears out what others have observed, i.e., that maturing out of delinquency often occurs with finding employment and more conventional associations. The total cost of the Pennsylvania Youth Advocate Program was relatively small.

The CCA report claimed that 80 percent of youths served by advocates in Harrisburg had no further contact with the justice system (35, p. 184). This is the only reference it makes to the question of recidivism. Whether any conclusions on recidivism of CCA as a whole will be made available is unclear, especially as computer and manual tracking systems met serious problems in obtaining comprehensive and reliable data.

Although conclusions about the costs of CCA are somewhat equivocal, they seemed to approximate those for institutional care in other States. Per capita costs for CCA were somewhat lower than they had been for the Camp Hill penitentiary unit, but if extended over the entire year would be more. But then, short term treatment was a feature of the program and so the two are not fully comparable (35, pp. 83-100).

PROBATION SUBSIDY--MONEY TALKS IN CALIFORNIA

One other large scale undertaking to shift substantial numbers of delinquents from State institutions to local correctional agencies was the Probation Subsidy Program in California. This was initiated by 1966 legislation which specified that probation departments could receive payments from the State if they reduced commitments to the California Youth Authority (CYA) and to the Department of Corrections. This necessitated a decrease in rates of their commitments according to a formula using base rates for selected past years. For each statistically computed "noncommitment," the Probation Department received $4,000.00 (9, Ch. 2).

Two purposes lay behind the legislation: one was to curtail anticipated expenditures for construction of new correctional institutions in the rapidly growing State at a time when economy in government had become a political concern. The other purpose came from the long cherished goal held by correctional administrators of upgrading standards for probation as well as equalizing its use from one county to another. Studies by CYA staff were cited to show that the percentages of minors and adults placed on probation could be substantially raised without endangering the community by a higher incidence rate of crime. The formula arrived at for subsidy payments appealed to the economy-minded legislators by guaranteeing they would be offset against the State budget.

The legislation was written to improve the quality of probation by several requirements: that subsidies earned by counties had to be spent for special supervision in caseloads having no more than 50 cases per probation officer, with a supervisor and clerical worker for each unit of six such workers. Each probation department had to submit a plan, which in effect amounted to a system of classification for intake of cases into the intensive supervision units. The CYA was designated to oversee the program. It kept statistical and fiscal records, conducted field evaluations of county programs, and monitored compliance with the legislative guidelines.

Practically all California counties entered the program and set up special supervision units whose numbers depended on the size of the county and its "earnings" as the subsidies income came to be known. New workers were recruited or transferred into the special units and new procedures developed within probation departments. Subsidy funds could be and were used for training purposes. Offices were remodeled and redecorated and automobiles assigned to some units. Special facilities were created in some counties, such as a day care center in San Diego. Services were contracted for to a limited degree.

A wide variety of treatment techniques were learned in training sessions and used in special supervision: I-level, conjoint therapy, transactional analysis, Brief therapy, Gestalt therapy, reality therapy, encounter groups, behavior modification, T-groups, and Psychodrama. For a while, the illusion existed that a new type of highly skilled, specially dedicated type of probation officer was in the making.

Specialization of units occurred and some probation offices established programs staffed with or made up of a number of special supervision units. Los Angeles County Probation Department witnessed the greatest proliferation of programs, among them Rodeo, Harambee, Narcotics Treatment and Camps Aftercare. Narcotics treatment tended to follow an older, fairly conservative program limited by Naline testing requirements. Camps Aftercare was distinctive for its use of indigenous community workers and its insistence that the community must learn to accept juvenile offenders sooner or later.

Harambee (Swahili for "let's work together"), located in the Watts area, was one of the most innovative of all of the programs for juvenile offenders. It took "hard core" black youths "a step away from bad trouble," and provided an alternative to camp placement. This meant that they had failed on probation and had a history of repeated offenses, which in some cases included assaults and robbery. Caseloads were kept under 35, and 18 probation officers, community workers and administrators served 180 cases, giving it the "richest" staff of all district offices. The elements of the program were: (1) team approach; (2) orientation to the family; (3) group process; and (4) community involvement. Harambee techniques were a mixture of frequent personal contacts with clients, supportive counseling, provision of official and personal services, plus surveillance. Workers were in and out of client homes day and night and sometimes brought clients into the office in what amounted to baby sitting.

Problems

For quite a period, CYA and Probation Officers held to the belief that the worst or more serious cases, who otherwise would have been committed to CYA, would be placed in special supervision. Eventually it was found that commitments to CYA and prisons could not be reduced in this way, so other strategies were adopted, many of which were quite arbitrary, such as imposition of quotas and establishment of review committees to approve commitment recommendations. As the makeup of special supervision unit cases and those of regular caseloads became more alike, it was difficult to justify the unpopular special status and privileges of the new Subsidy Probation Officers. Conflict also developed around the sometimes inquisitorial procedures used to select cases for intensive supervision.

Counties found that subsidy earnings fluctuated considerably, which made administration and program planning difficult. Some counties had trouble keeping commitments down either because they started with a low base rate or because the local crime rate soared upward. A good deal of resentment was expressed by county administrators because the State refused to augment that $4,000.00 per commitment reduction to compensate for inflation. By 1970, police and law and order groups began to attack probation practices, especially in Los Angeles, on grounds that dangerous offenders were being released into the community.

Evaluation

There is no doubt that the Probation Subsidy Program succeeded in reducing commitments to CYA and to the California Department of Corrections. While other factors were at work to help reduce commitments, it was estimated that the Subsidy Program was responsible for a drop from 16,000 to 12,000 admissions to institutions through 1970-71. Commitments to CYA decreased considerably more than those to Corrections.

While the goal of encouraging more granting of probation was achieved, it was found that a greater use of local residential facilities and camps was necessary to sustain commitment reductions. In time, probation caseloads tended to rise to their 50 case per worker limit.

Inasmuch as probation had been estimated to cost only about one-fourth that of per capita institutional custody, it could be assumed that the program had saved money. This proved to be true; even after payment of the subsidies it was estimated that the State saved over $60 million through June 1972 (23, p. 16). However, costs to counties exceeded State reimbursements for this period by $18 million, reducing overall savings to taxpayers to a little over $45 million (23, p. 18). This reflected increased local use of jails, camps, and other institutional facilities.

Recidivism

Another way to look at the costs of the Probation Subsidy is to consider whether any additional recidivism occurred. A number of studies were made to try to answer this question (23, pp. 47-51). They were pretty much in agreement, namely: (1) there was no greater recidivism among offenders under probation subsidy than those discharged or paroled from Corrections and CYA; and (2) there were no significant differences between offenders in intensive supervision units and those in regular probation caseloads. Hence it may be said that the original assumption that more offenders could be safely kept in the community was validated. However, a second assumption that the effectiveness of probation could be increased by reducing caseloads was not supported. Put in crudely simple terms, it did not appear to make any difference whether offenders were incarcerated, put into relatively large caseloads receiving routine probation, or placed in small probation caseloads with specialized treatment programs so far as recidivism was concerned.

Another method of studying recidivism carried out by The Center on Administration of Criminal Justice at the University of California, Davis. This was to assess what effects commitment reduction had on overall recidivism. The study was done by comparing before and after samples of California offenders taken in 1965 and 1970. It was calculated that about 8 percent of arrests could be attributed to commitment reduction. Estimates of the increase in arrests for violent crimes due to commitment reduction ranged from 0.1 percent to 2 percent (22, pp. 28-29).

No effort has been made to estimate the costs in property losses that might be attributed to the increased recidivism due to reduced commitments, although the Chief of Police in Los Angeles spoke of this as a reality. Nor are any facts presented as to the kinds of violence and effects on victims that the increase in crimes, however small, may have had.

It should be noted that one evaluator, Lerman, has challenged the idea that probation subsidies reduced commitments if increased incarceration at the local level is counted (10). However, he does not show that the increase was in fact due to the program. Lerman also argues that there were no fiscal savings to the State, disputing the manner of their computation, and pointing out the large absolute increase in correctional costs. Again, he does not show to what extent the increase may have been due to the probation subsidy versus other factors.

With passing time and increasing crime rates, earnings of county probation departments declined and a number experienced difficulties maintaining their programs. The differences in commitment rates of counties which had been considerably narrowed once again began to vary more widely and intensive supervision caseloads began to fill up to their limits. In 1978, the legislature abolished the program and replaced it with a generalized subsidy program for county juvenile justice systems. Fifty-five million dollars was appropriated, to be allocated by County Boards of Supervisors to subsidize operation of probation, juvenile homes, ranches and camps, plus additional costs made necessary by 1976 legislation which had eliminated secure detention for status offenders. In order to receive pro rata subsidies, counties are required not to exceed their commitment rates to CYA and Corrections for a four-year average ending in 1976-77. However, not counted in calculating the rate limits are violent offenders who have committed murder, attempted murder, arson, certain robberies, rape, attempted rape, kidnapping, assault with a deadly weapon, assault with chemicals, and train wrecking. Sixteen member county justice advisory groups are established and CYA is to administer the subventions.

In a very general way, it may be concluded that California, whatever else it has done with this newer legislation, has reversed or substantially qualified its policy of encouraging greater use of probation. Presumably, more violent offenders will be dispatched to CYA and prison. How this will ultimately effect the dispositions of hard-core and violent juvenile wrongdoers remains to be seen.

INSTITUTION-BASED PROGRAMS--A MINNESOTA COMPROMISE

The large-scale programs reviewed to this point have had the clear objective of deinstitutionalizing juvenile offenders. While Minnesota undoubtedly has been influenced by the same forces behind this movement, its correctional leaders have opted for a program which begins with institutionalization then progresses to community-based services. In choosing this, a middle ground, its Department of Corrections explicitly rejected the concept of incapacitation and the operation of a prison within the juvenile justice system.

Like other States, Minnesota has seen an increase in violent crimes by juveniles: robbery by 459 percent and aggravated assault by 700 percent since 1970. In 1974, a survey in the Minneapolis-St. Paul area estimated there was a "risk pool" of 246 hard-core violent offenders (23, p. 1). Growing awareness of the youth violence problem was coupled with public recognition that no secure facilites existed in the juvenile justice system and that the only means for safe disposition of such cases was certification for criminal trial and incarceration in adult prisons. This could happen with youths under 14 years; one result was that the procedure was involved in only as a small number of cases.

Impetus to remedy the situation came from the study report of the Children and Youth in Crisis Project, a report of the Governor's Commission on Crime Prevention and Control (40), plus an in-depth hearing on a certification remanded from the Minnesota Supreme Court to the District Court (38). The State High Court was caught by its obvious concern with the problem of hard-core youthful offenders, but, like the U. S. Supreme Court, reluctant to abandon completely the possibility of their treatment within the juvenile justice system. Consequently, it produced some conjectural law, ruling that a juvenile cannot be certified if there are programs that could be implemented to rehabilitate the offender (38, p. 59).

Particular action was initiated by the appointment of a special task force by the Commissioner of Corrections in 1977. In conjunction with this, the Department of Corrections organized and secured funds for its Serious Juvenile Offender Program. The Minnesota policy recognizes the threat of the juvenile whose behavior is "horrendous" and whose welfare is of secondary importance. For such offenders the solution remains certification to the adult correctional system. Short of this are juveniles for whom such a measure would be too strong and for whom a combination of institutionalization and community reintegration is preferable. The program Minnesota designed for this purpose was conceived as experimental "...since no clearly recognized approach to the problem has yet been devised." (47, p. 59).

Generally, the target population is the 16- and 17-year-old youths who are currently adjudicated for murder, manslaughter, aggravated assault, robbery with a prior felony-level offense or burglary with three priors. Fifty to 60 of these types of offenders were to serve as experimental subjects, with regularly institutionalized and paroled youths acting as controls. Another small group was singled out to have access to the same community services given the experimentals. Plans called for a case management team to develop behavior contracts, organize intramural services, purchase community services, also maintain liaison with significant persons in the offender's home community.

Initially, the experimental youths were to be housed in a variety of secure facilities through the State using security cottages at the State Training School. This is Phase I, secure/orientation of the program. Phase II is Residential Restraint, which may be in secure cottages, open cottages or a "highly structured" Community Residence. The time spent in this phase is contingent on the type of offense for which the youth was adjudicated: property offenders--4 to 14 months; person offenders--6 to 18 months. Phase III is Community Surveillance which lasts for at least 6 months. During this time, the offender may remain in residence of Phase II, return to his family, be placed in a foster home or in an independent situation. Supervision is intense for three months, amounting to 18 hours per week.

Contracts involving youths, families, agencies and others are negotiated for Phases II and III. There is disciplinary action for contract violations and minor infractions. Youths may be regressed to institutional security or certified for further court action. Such decisions are quite formal and allow appeals. A correctional ombudsman monitors administration of the program and there is an Advisory Committee for the project as a whole.

The Minnesota experiment appears to be essentially an intensified parole program, with the exception that case management--to avoid "discontinuities of treatment"--begins with institutionalization. Linking the length of time in the program--up to two years--to the nature of the youth's offense features the principle of "commensurate punishment," which is regarded as an important ingredient of the program. On paper, the Minnesota program, with its emphasis on aftercare, appears to be well thought out and the relatively small number of offenders in the experiment, coupled with well-developed community resources in cities of the State, give it promise of at least a fair trial. While provision is made for periodic and full evaluation of "processes, costs and outcomes" of the program, given its start in late 1977, no data will be available for some time.

THE CALIFORNIA COMMUNITY TREATMENT PROGRAM

The California Community Treatment Program (CTP) is an institution-based program which established an intensified parole program in 1965 as an alternative to institutional treatment. Whether it should be discussed here is debatable, considering that it excluded most serious offenders among "eligibles" for the program. However, its employment of I-level classification epitomizes in a number of ways the positivist view of delinquency as a symptom of defective attributes of individual offenders and the need to fit treatment to a diagnostic category. This, plus systematic evaluation of results of the program from 1969-74, recommends its inclusion in the discussion of intervention programs.

Offenders in the program were drawn from admissions to the Northern Reception Center for CYA, those between ages 13 and 19 years. Experimental cases, after classification at the Center, went into supervision by special parole agents whose caseload ran no more than 12 youths and who were expected to make contact with their clients two to five times per week. Stage A of intensive supervision lasted eight months, followed by Stage B in which contact between youth and parole agent dropped to one per week, then into Stage C with one contact per month. At this stage, comparisons were made with controls who had gone into standard CYA institutions for six to nine months, then released into regular parole.

As noted, the key treatment was by I-level. There are seven I-level classifications, together with subclassifications, which signify different levels of Interpersonal Maturity assessed by recorded interviews and presumably standardized interpretations. Delinquency is assumed to result from personal immaturity in various forms; ideally treatment, as well as the person doing the treating, should be matched to the I-level of the case.

The following illustrates the forms and use of I-level:

Maturity Level	Delinquent Subtype	Treatment
I_2Aa	Unsocialized, Aggressive	Supportive environment--foster home--meet dependency needs
Ap	" , Passive	
I_3Cfm	Conformist, Immature	Adult expressing concern for youth by controlling his behavior; group treatment through dependency on peers
Cfc	" , Cultural	
Mp	Manipulator	
I_4Na	Neurotic, Acting Out	Reducing internal conflicts by family group therapy, individual psychotherapy or group psychotherapy
Nx	" , Anxious	
CI	Cultural Identifier	
Se	Situational, Emotional Reaction	

A 1963 list showed that the largest single numbers of I-level treatees were receiving individual counseling, foster home and group home placement, and temporary confinement, which was also conceived of as treatment.

Evaluation

Performances of experimental and control group youths were measured by pre- and post-project attitude change tests and by recidivism rates. On the California Psychological Inventory, both groups showed positive changes on 7 of 14 scales. However, the degree of change from pre- to post-test was greater for the experimentals on three of the 14 scales (52). Whether these test items have any bearing on possible delinquent behavior, however, is problematical.

Parole violations after a two-year period proved to be 40 percent for the experimental group and 61 percent for controls. Comparable differences in arrest rates also were found (20).

Lerman has challenged these measures of the success of CTP, however. In a reanalysis of the data, he concluded that the differences disclosed by CYA researchers on CTP were due to differing arrest practices of CYA parole agents and non-CYA parole agents. Re-arrest rates by non-CYA agents revealed no difference between CTP and regularly paroled CYA cases. Lerman also criticized CTP for increasing use of temporary detention as a control measure under the guise of treatment (10, p. 63ff).

An attempt to replicate the CTP model in 1971 by the Alameda County Probation Department revealed no difference in arrest rates between I-level cases and those receiving other treatment. In this study, I-level classifications could not be applied successfully to lower class black youth (10, pp. 69-70). Others have also criticized the I-level scheme (17, pp. 3-59). Finally, Lerman called attention to cost over-runs in the CTP program, which made it over half again as expensive as CYA incarceration.

All in all, indications for the use of this kind of highly specialized program are not encouraging.

EXEMPLARY PROJECTS

Exemplary projects are confined to a locality, sponsored by a local agency or a council and are funded locally or jointly with outside funds. In some cases, they have evolved out of pre-existing services provided by a community agency. They are organized with some novel set of services or procedures, tending to revolve around remedial or catch-up education, employment and recreation. Several projects highlight the mastery of special skills, training, or unusual type experiences. In three of the programs: Oceanographic Education, Outward Bound, and the Seattle Atlantic Street Center, there was no way to determine from available information how serious the offenses and records of the program participants were. The programs were included because they represented novel and distinctive innovations of method or program content. On the face, there is no reason to believe that features of such programs are not applicable to treatment of serious offenders.

Project New Pride

Project New Pride originated under the sponsorship of the Denver Mile-High Chapter of the American Red Cross. From 1973-1976 the Denver Anti-Crime Council (DACC) supported the project, after which the Colorado Division of Youth Services took over funding. Part of its services, the Learning Disabilities Center, continued to be financed by the DACC (18).

New Pride gives primary attention to education through assignment of its participants to an alternative school where instruction is on the basis of one-to-one tutoring. Specific problems are dealt with in a Learning Disabilities Center. Supportive counseling goes along with instruction, both aimed at enhancing the self image of the client and meeting his everyday problems. Instructions in job application procedures, vocational counseling, and on-the-job training are a key part of the program. Finally, youths are "exposed" to cultural enrichment experiences, including an Outward Bound weekend. Professional staff/client ratio is quite high and volunteers provide tutoring help.

Most New Pride participants are Chicanos and blacks, aged 14 to 17, referred from the Denver juvenile court. They have a recent arrest record for robbery, assault, or burglary with two prior convictions. Two-thirds are school dropouts, and the largest number of these dropped out at the tenth grade level. Seventy-eight percent had at least one learning disability. Twenty referrals were randomly selected at four-month intervals. During three and one-half years, 220 youths have been served. Treatment is intensive (daily) for three months, after which weekly follow-up contacts are maintained for another nine months.

Evaluation

New Pride has gained considerable regional renown and was named "agency of the year" by the Colorado Juvenile Council. Evaluative data give some support for the favorable reputation of the project, although as will be noted the data are far from adequate or complete. Pre- and post-testing showed that the New Pride youths improved their school standing from their average of four years retardation. Likewise, the percentage of those testing at only two years retardation increased. However, pre- and post-test scores were available for only a half of the youths (19, p. 123ff).

While 41 percent of clients returned to public school, this figure declined after the Alternative School was made part of the Denver system. About two-thirds of clients began working while on project in full time or part time jobs, staying employed from one to three months (19, pp. 125-129).

In calculating recidivism, New Pride clients were contrasted with some 2,200 juveniles who were arrested for an impact offense (a stranger-to-stranger offense or burglary) or auto theft. According to this analysis, the former had a re-arrest rate of 50 percent per client year at risk (first and second year clients were combined to make one year at risk). The expected rate extrapolated from control data was 78.8 percent (18, pp. 130-140). It must be said that the cases providing baseline or control data differed substantially in regard to sex, ethnicity, age and offense from the New Pride referrals. This raises a question as to whether referrals from the juvenile court were actually random. Furthermore, while corrections were made in baseline expectancy re-arrest rates for sex and ethnicity, not so for age. Since New Pride persons were older, there is a distinct possibility that their better performance was due to the regression effect and maturing out, noted previously in connection with the UDIS evaluation critique.

Costs

New Pride costs are modest, amounting to about $4,000 per client year. This compares with $12,000 per youth incarcerated and about $800 per year for those placed on probation.

Providence Educational Center

The Providence Educational Center (PEC) (in St. Louis, Missouri) resembles New Pride with respect to its emphasis on remedial education but it has no special learning center. It does, however, have an aftercare program. The Center more or less evolved from a Christian Brothers All Boys High School, which between 1968 and 1970 operated informally as a recreational and tutoring center for disadvantaged black youths. In 1970 the school was closed but continued to be used by the Providence Inner-City Foundation, largely served by volunteer staff. Grants received in 1972 allowed transformation of the operation from a general recreational, educational program serving a neighborhood to a treatment and re-socialization center for juvenile court referrals (51, pp. 4-6).

The Center passed through a period of hurried development in which goals were not clear to one during which behavior modification and disciplinary theme were predominant. This was not a satisfactory line for the staff, so in 1973 the present educational, vocational, and rehabilitative features of the program were articulated. The PEC goals are to reduce street crime, reduce truancy, improve reading skills, apply therapy to improve clients' self-image and social adjustment, and try for reintegration of youths into school and work. The program has three components: educational, social service, and aftercare. Teacher/student ratios are high--one to six, and classes are limited to 12 students. However, the distinctive characteristic claimed for the program is close coordination of the three program components.

Most PEC clients are juvenile court referrals between ages 12 and 16 years. They come from economically marginal, large families and are nearly 100 percent blacks. Sixty-seven percent of the clients have records of "impact crime." However, a small number of referrals came from the court as neglect cases. Most youths had five, six, or seven primary grade status but as to achievement only 1.7 percent were at their appropriate grade level. Over one-half were behind from one to four years in schooling.

There are individual treatment plans, formed, assessed, and reworked by classroom teams made up of teachers and social workers. They consult specialists who have worked with the students. The plan seeks to move the youth up through a hierarchy of simple to complex skill mastery. Individual counseling for one-half hour per week and one-hour per week group counseling are directed to self-image improvement through peer interaction and support. Coordination is achieved through bi-weekly meetings of classroom teams and weekly department meetings. Feedback on the working of the program is gained from the contacts and experiences of the aftercare workers. This is to be used for progressive modification of services or to change the programs' purposes.

Evaluation

Duration of enrollment in PEC averaged from eight to nine months, including about 65 percent who terminated during the first year. Truancy rates for those in public school dropped by 16 percent from the pre-program school record. Thirty-four of 118 youths took an eighth grade equivalence test and 25 passed; but only 31 students were tested and retested with the same instrument; the Wide Range Achievement Test. Eighteen students showed substantial gains in several areas, three showed losses and five stood still. According to judgements of the classroom teams, principal and the school counselor, behavior of students improved while under treatment but this is not validated by systematic data (40, p. 63f).

The success of the program in preventing recidivism was assessed by before-and-after records of kinds and level of delinquency. Forty-one of 106 youths studied were referred to juvenile court while in PEC. Half of these (19) had higher referral rates than before and the other half had similar or lower rates.

Follow-up data on 56 PEC clients terminated for six months showed that 39 had no post referrals, 5 had a higher referral rate, 10 no change, and 2 with a lower rate. The evaluation did not indicate how many of these originally were adjudicated for impact crimes. However, only five of the post referrals were for impact offenses (40, p. 64f).

The data on recidivism of PEC clients are quite thin and none is at hand to compare them with those treated in institutional settings. Unfortunately, age characteristics of PEC cases are not given, although it may be inferred from their extensive school retardation that they were an older teenage population. If so, the same reservations due to regression and maturation effects may have to be made with regard to recidivism findings.

Costs per PEC student, as with those in New Pride,are not high; $3,300 per school year. This is higher than public school costs but lower than costs at Missouri Hills Home for Boys--$6,800 and also for the State Training School at Bonneville, Missouri--$11,000 (40, p. 57).

Oceanographic Education--Turning On Turn-Offs

A somewhat exotic and certainly highly specialized delinquency treatment program is that of the Associated Marine Institute (AMI) at Deerfield Beach, Florida. This was begun in 1969 by a judge who arranged to have two juvenile offenders employed on an environmental marine research project. It involved small boat operation, diving, and sample collection. It seemed to so improve the lads that more were enlisted through an arrangement with the Florida Ocean Sciences Institute (FOSI) at Deerfield Beach and with the State. The program which emerged centered around training in marine technology and has been replicated in five large Florida cities: Panama City, Tampa, Jacksonville, St. Petersburg, and Miami. These are community-based institutes and eventually have come to serve about 600 young people annually (45, p. 28).

The FOSI is basically an educational program combining marine-oriented subjects with conventional high school subjects supplemented by remedial reading courses. The former include life saving, diving, seamanship, cruises, marine science theory and lab work, marine shop maintenance, underwater photography, and Coast Guard Training. Instruction is a half-and-half mix of field and classroom, with a learn-by-doing theme. The courses last six months. Staff-student ratio is one to seven.

Referrals come to the program from juvenile courts, Division of Youth Services (DYS), Division of Vocational Rehabilitation (DVR), school authorities, or parents. Students are 15-18 years of age, and must have lengthy offense records; 8.5 offenses per person according to a 1975 survey. Whether referrals from DVR, school authorities, and parents were equal in seriousness to those from the juvenile courts and DYS is not known. Applicants must show interest, be tested and evaluated and enter into an agreement with the Institute. It is intended that they will graduate from a regular high school.

Results of the program originally were given in very general terms. Thus, of 576 boys enrolled in FOSI, 78 percent passed the 30-day evaluation period. For these, the recidivism rate was 11 percent. For those who graduated it was 7.5 percent (45, p. 28). All of this is scarcely rigorous evaluation. Apart from this, however, the report on the program indicates a great deal of success in getting a wide spectrum of public and private agency cooperation, suggesting that its community-base was very real.

An evaluation of the AMI in 1978 throws more systematic light on its workings (28). This revealed that the program is quite selective in that the youths accepted had to have an IQ of 90 and to have completed the sixth grade of school. This probably was necessary because of the specialized education involved. One consequence of this was that blacks were underrepresented in relation to their total number committed to custody of the Department of Health and Rehabilitative Services (HRS). However, HRS decisions rather than those of AMI seem to have affected this, plus which black youths themselves were less likely than whites to be interested in the program.

A study of 95 youths admitted to AMI January through April showed that 47.4 percent were successfully furloughed (28, p. 13). Generally, those who remained in the program revealed educational and behavioral improvement, e.g., fewer cases of destruction of property and use of drugs and alcohol. Proportionately more, 77.6 percent of AMI furloughs, as opposed to 57.5 percent of furloughs from all other youth services programs, were classed as honorable discharges (28, p. 36). For 1,242 trainees in AMI who were favorably terminated between 1969 and 1977, the recidivism rate measured by criminal acts followed by court conviction was 13.8 percent (28, p. 39). These were not compared with DYS data.

The selective emphasis in AMI, with explicit rejection of violent offenders, probably makes it more useful for the minor offender than for the hard-core, serious delinquent.

Outward Bound--Becoming a Man

The idea for the Outward Bound programs came from a World War II survival course established in Wales to train merchant seamen for survival during the battle of the Atlantic. Three Outward Bound schools have been organized in Colorado, Minnesota, and Maine, each course being divided into eight patrols of 12 boys with one or more instructors. Courses stress physical conditioning, technical training, safety training and team rescue, evacuation and fire fighting, beyond which each school adopts a 26-day program adapted to its special physical environment. Colorado features climbing, camping, hiking, and rappelling, ending with a 14,000 foot ascent of a peak. Minnesota focused on camping and wilderness survival, capped by a 200-mile canoe trip. In Maine, activities concerned navigation and seamanship, with a five-day unsupervised cruise in 30 foot whaleboats as a finale.

The theory behind Outward Bound, if it may be called that, is that by presenting youths with a physical challenge and pushing them beyond their believed limits, they will demonstrate their own competence to themselves. An additional idea is that by overcoming obstacles, the youth solve masculinity conflicts in a socially approved manner (33, pp. 437-445).

In 1964, 60 youths, 15-1/2 to 17 years of age, including serious offenders, from the Massachusetts Division of Youth Services were put to the test of Outward Bound. Their recidivism scores were then compared with 60 matched controls handled by conventional dispositions, i.e., institutionalization or immediate parole from a reception center. The incidence of recidivism among the experimentals was 20 percent, only half the expected rate. Controls had a 42 percent recidivism incidence.

However, there were large differences between the recidivism records by schools. Practically all of the recidivists showed up in the Minnesota program--10 out of 12. This led to an interpretation that delinquent adolescents are action oriented and the failure of the Minnesota program to offer danger and excitement explained its poor showing (33, p. 8). However, samples were small and varied in size--18-14-18, so it is difficult to draw firm conclusions from the study. Furthermore, the experimental groups excluded any boy with a physical disability, psychopathology or with a history of violent assault or sex offenses, in addition to which voluntary participation was demanded. Hence, it is doubtful whether such a program is applicable to a broad range of delinquents, especially the hard-core offender.

A similar program for young adult criminals in New Mexico calling for mountain "wilderness survival" suffered a "wash out" of one-third of the group at the first field test even though all had been physically and psychologically screened for the experience (46, p. 8).

According to Strasburg, a five year follow-up of the original Outward Bound experiment disclosed that the favorable results were not sustained. However, there was a change in the behavior of the experimentals, who spent less time in detention than controls (49, p. 356). The cost of this program is comparatively modest--$500 to $600 per participant.

Seattle Atlantic Street Center--A Social Work Approach

While the Seattle Atlantic Street Center (SASC) represents no new type program, it is included along with exemplary projects because it sought to systematically define its services to delinquents and undertake a rigorous self-evaluation. This was not true of New Pride and the Providence Center, both of which were so concerned with program development that evaluation remained a residual concern. Another reason for attending to SASC is that it applied social work techniques to the problem of delinquency control in contrast to the more formally organized special educational approaches of New Pride and Providence Center.

SASC is a small settlement house in the Seattle central area which in 1962 obtained a five-year grant from the National Institute for Mental Health to evaluate its social work services to acting out boys. The first two years were given to preplanning, hiring personnel, selection of services and developing recording instruments, and evaluative techniques. The remaining period, 1964-67, was devoted to the test phase proper.

The procedure involved selection of "high risk" boys, blacks, who moved into two junior high schools from six of Seattle's most racially segregated elementary schools. The meaning of "high risk" was not clarified in this study other than to indicate that it included police contacts and police offenses. A complex prediction method was developed, utilizing 43 criteria measures and 76 prediction measures. From this, a fourfold classification of groups according to predicted and actual evidence of acting out plus these cross-classified by place, i.e., in community and in school as compared to in school only. Thus, there were four types of high risk boys. Control group boys were classified in the same way. Also, an attrition group was recognized to be included in final comparisons of success or failure (48).

Three professional educated workers, experienced with delinquents, were assigned to provide services for nine boys in each risk group (36 in all). This was blind in that workers did not know who was experimental and who was a control. Boys were invited by them to join a club of which there were three groups of seven boys each which met at the Center for two and one-half hours per week. Recreation, discussion, eating, and trips to community sites made up services, along with individual counseling during the week.

Parent groups also were formed and school officials, together with other community resource people, were brought into these groups.

Services were predicated on a theoretical rationale drawing on five theories of delinquency: anomie, differential association, community disorganization, family disorganization, and self-concept. Workers assessed cases according to conditions corresponding to those theoretically assumed to be operating causes, and then sought to intervene in these areas. Thus, they sought to break down isolation, increase opportunities, diminish family discord, improve boys' self-images and weaken delinquent peer associations as needed. Total time spent with each boy ranged from 45 to 100 hours with a median of 79.

Evaluation

The objective of the program was to reduce pre-test acting out behavior as measured by ratings based on school discipline files and police records. Four groups were compared: experimentals, controls, low risk boys, and attrition cases, i.e., those refusing to participate after selection. Results were tabulated for four periods: (1) pre-test, (2) service, (3) first post-service (six months), and (4) second post-service (six months).

The experimental group had somewhat poorer scores in the pre-test period than the controls, but during the service period performed as well as controls in regarding school behavior. On police records, the experimentals improved beyond the control group during the service period. In the first post-service period, the experimental youths regressed towards their pre-test level making only slightly better scores than the controls. In the second post-service period, performance on all measures were better than the control group because none of the experimental youths had police contacts. However, this last was probably due to the random fluctuations of police contacts rather than to sustained performance (48, pp. 19-26).

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The attrition group, which had police offense scores twice those of experimentals and controls, were regarded as failures because the project failed to enlist their participation. However, their police contacts dropped by one-half during the first post-service period and to zero in the second. This was not interpreted in the study report.

Whatever salutary effects social work type services may have had with the experimental youths, they seemed to wash out with passing time. Results, then, are suggestive but not conclusive, particularly since the total N was only 61 and numbers of cases in all tables were small.

RESIDENTIAL CENTERS FOR VIOLENT OFFENDERS

Thus far, programs under consideration have varied with respect to their focus on serious or chronic offenders. Some have included in undetermined proportions those whose histories and current acts embraced violence. The number of programs designed to deal exclusively with this latter population is small and their differentiation is quite limited. This reflects the fact that the relative number of such offenders is small and their official recognition derives from the problems of social control they present to agencies and institutions. Consequently, programmatic focus has been on the so-called "acting out" delinquent, the "impossible adolescent" or the case that has been a "severe problem" for custodial and professional treatment people.

While typologizing violent offenders has yet to be done successfully, there is reason to believe that those with a background of street violence make relatively uneventful adaptations to institutional existence, which, depending on the situation, may become the substance of a subculture. They often are canny and manipulative or learn what is minimally necessary to satisfy their custodians. The other offenders with violent tendencies fare less well in the institutional setting, being used or abused by other delinquents as well as being singled out, and even scapegoated by the correctional staff.

Agencies may refuse to take these trouble cases and institution personnel may try to get rid of them. Historically, in some States, this has led to a travesty in which youths were transferred to mental hospitals where they were equally out of place. Psychiatrists there usually declared they were not psychotic and sent them back to corrections. Yet, inter-agency conflict and lack of communication prevented any sustained action to create facilities for juveniles difficult to control and assaultive in nature. Only recently have programs emerged to fill in the gaps between agencies where these cases fall. Four such programs will be discussed here: two are under mental health sponsorship, one under correctional auspices, and one a private, profit-making enterprise.

Centerpoint

Centerpoint was established in Massachusetts beginning in 1975 when a special class of "seriously troubled youth" was recognized for whom no programs nor responsible experts existed. Some cases of this sort were sent to the Bridgewater State Hospital for evaluation after Jerome Miller's reform had closed the facility to juveniles. Alternative intensive care programs supposed to absorb these cases apparently were not successful in doing so. Because of the agency cooperation problems involved, top human service administrators concentrated on one geographic area, Region IV, as a "pilot region." From this came the idea of a medium security treatment program under the authority of the Superintendent of the Danvers State Hospital, controlled by a regional interdepartmental team and aided by a combined Citizens-Professional Advisory Committee. A steering committee was organized to bring the new center into being (26).

Program

The "philosophy" of Centerpoint embraced two ideas: (1) the right to treatment, and (2) belief in a person's ability to grow, however severe his handicap. To these ends, the program was planned to be consistent, family-like, have a "predictable structure," with clear-cut limits, expectations, and a variety of opportunities for growth. Staff was to be an ethnic-age-sex mix and present "healthy" role models. Rehabilitation was conceived as a series of steps leading back into the community.

In addition to carefully specified intake procedures, the program works through a case manager and treatment team consisting initially of a supervisor, a psychiatric nurse, a teacher, the consulting psychiatrist, Assistant Director of Clinical Services, and Assistant Director of Education. Elaborate assessment documentation and careful decisions by conferences precedes movement of each case through progressive steps projected to last 18 months, including a stay at a quarter way house. At the point when the youth becomes a day student, he begins to participate in his own case planning.

Criteria for referral to the program are: 14-18 years of age, male or female, display of severe emotional and aggressive behavior, be legally committed to the Department of Youth Services or Department of Mental Hygiene, failure in nonrestrictive environment, and willingness of local school system to pay $9,000 annual tuition.

Services include adaptive physical education, leisure time activities, formal remedial education and new skill acquisition, environmental education, vocational training, family therapy, medical treatment, and counseling.

In summary, that which appears to be distinctive about Centerpoint is its detailed procedures for referral and its step system, spelled out by very precise definition of privileges and restrictions in spatial and behavioral terms. However, security is maintained by close personal supervision rather than by the physical and spatial environment.

No evaluation of Centerpoint is available at this point. Nor is adequate information at hand on costs, although they can be judged to be high.

Long Term Treatment Unit (LTTU)--New York

The Court-Related Unit was created under a grant to the New York Division for Youth (DFY) in 1975. It has two components, DFY's Long Term Treatment Unit and the Department of Mental Hygiene's (DMH) In-Patient Diagnostic Unit. Its program is located at the Bronx State Psychiatric Center and began operation in 1976. Its purpose is to provide intensive psychiatric services for violent/aggressive, mentally ill juvenile delinquents in a secure setting. The target population is the most disturbed, agressive group of delinquents in New York State.

Admission to the 18-bed facility is a lengthy complicated procedure, at one stage involving a hearing office to make certain the case is eligible for its services and to protect the legal rights of the juvenile. Cases go through the Diagnostic Unit and if they are found chronically mentally ill, they get admitted to other DMH facilities. Those diagnosed as borderline or episodically mentally ill are returned to DFY then placed in LTTU. This occurs after they are stabilized in the Diagnostic Unit and a treatment plan formulated for them.

Eligibility requirements are New York residence, male, adjudication for one or more acts of violence: murder, kidnapping, arson, manslaughter, rape, sodomy, robbery, attempted murder, and kidnapping. Otherwise eligible are those adjudicated for a lesser offense accompanied by bizarre violent behavior which appears to be associated with mental or psychological disorder. In the same category is adjudication for a lesser offense with a history suggestive of increasing violence against persons. Those eligible also must be placed with DFY prior to the youth's seventeenth birthday, and his behavior must be aberrant enough to cause at least one psychiatrist to conclude that further examination for mental illness is warranted (43).

Program

The LTTU is characterized as fostering behavioral change through means of a highly structured, therapeutic milieu, clinical psychotherapy and behavior modification techniques such as the token economy and a level system. Contracts also are employed to improve particular behavior patterns. Weekly staff meetings are held to continually adapt procedures to changing needs or new treatment goals. Each resident is seen twice a week by a psychiatrist, psychologist, or a rehabilitation coordinator for individual therapy. Group meetings of staff and residents are held once a week to deal with community problems, and bi-weekly group therapy is directed to particular individual problems. There is also family therapy each week for half of the residents. The token economy awards points for positive behavior which can be converted into tokens good for canteen items and off campus trips. Promotion from lower to higher levels of responsibility and privilege follows from consistent improvement.

The ascendancy of the medical model in LTTU is clearly evidencedby special attention to medical problems and use of psychotropic medication. This is regarded as an effective and humane management tool. Although a minority of residents receive medication, it may be administered to any youth to control violent behavior; also in instances of regression to a state of confused sexual identity. Doses are raised and lowered according to need.

A full-scale school program is followed by LTTU residents and a varied, structure recreational program attuned to therapy is offered. After-care planning is begun soon after a youth comes on the program, and an after-care counselor begins to work intensively with the youth several months before release. Transition to a community base is recognized as potentially traumatic so plans are made to place "graduates" in a DFY Urban Home or at their own homes but continuing to return for counseling and other services.

Problems

Some difficulties were experienced by LTTU staff in use of the behavior modification by tokens. For a period, tension existed between line staff and clinical staff due to lack of communication between them. There were a large number of "runs" by residents during the early months of the program operation. This was seen as being due to difficulty in organizing security procedures and lack of program cohesiveness. A security hazard also existed in some of the connecting hallways between buildings. Location of the unit on the upper floors of a building in the Bronx Psychiatric Center likewise was not regarded as desirable. Finally, in the early period of the program, cooperation between Diagnostic Unit and LTTU was not good; differences in treatment approach, conflict over the use of medication, traditional rivalries, and the press of daily work made a desired level of cooperation hard to attain.

Evaluation

Three different evaluations of LTTU have been made. According to a DFY release, all were favorable and recommended continuance of the program. When first in operation, LTTU cost $50,000 per youth per year. In 1977, this was reduced to $45,000, and late in 1977, budgeting was further reduced to $37,500 per youth/year. While partisans have justified this extraordinary rate of expenditure, taxpayers may groan when it comes to their attention. It would seem to be justifiable only if there is a very high rate of success in outcomes of treatment.

On the face, attempting to treat cases needing continual medication seems questionable in the light of research that now indicates no learning occurs in mental patients while under the influence of ataractic drugs (29, Ch. 4).

PROGRAMS FOR ASSAULTIVE AND UNMANAGEABLE OFFENDERS WITHIN CORRECTIONS

Some attention needs to be given to several intra-institutional programs for assaultive, unmanageable offenders undertaken as experiments by CYA in recent years and subject to evaluation as of 1976. The programs deal with a somewhat older offender population, but a substantial proportion of juvenile offenders are included in it. With few exceptions, only serious offenders find their way into CYA. Reports were made on three such programs:

Cambria

This is a short-term 90-days intensive treatment program at the Paso Robles School. Wards there range in age from 15 to 21 with a mean of 18.1 years. The program is for assaultive, uncontrollable wards unable or unwilling to accommodate to an open dorm setting. The objective of treatment is re-entry into a regular institutional regime.

There are 15 wards in the program, served by 16 staff, who also manage a small temporary detention center. Treatment includes individual counseling but features small group sessions held twice a week using transactional analysis. Other sessions give assertion training, role playing, and relaxation exercises. There are, as in most programs, educational and recreational components of the overall program.

Sonora

This is one of eight dormitories located at the Karl Holton School, emphasizing academic instruction for offenders 15 to 23 years of age. It contains 40 beds. An enriched staff selects those for treatment on the basis of violence proneness and aggressiveness, also by I-level classification, three and four with designated sub-types. The treatment model is behavior modification through weekly individual and group sessions.

Oak

This is an intensive treatment program for male youths 16 to 24 years with a record of assault, battery, and escape from confinement. Many have parole violations and a history of institutional transfers. Psychotic and mentally retarded wards are excluded. Treatment is by transactional analysis in conjunction with behavior contracts. Wards hopefully will progress through four phases of increasing autonomy and responsibility. Like the other two programs, it has educational, vocational training, and recreational schedules (21).

Evaluation

Presenting problems based on ratings by two social workers showed wards of all three programs to rank very high--60 to 84 percent--on Battery, Assaultive Behavior, and Program Failure. Rated psychosocial problems showed the three populations to be high, around 50 percent, on suspiciousness, scapegoating, and denial of a problem, except for Oak where scapegoating was only 26 percent.

It was found that over a one-month period a relatively large proportion of wards either eliminated or reduced their problems of battery, assaultive behavior, program failure, and unruly behavior apt to cause transfer from the program. Improvement in the Oak program was highest in this last regard but the researchers cautioned against attaching too much importance to differences between the programs. A six-month measure of change was had only for the Oak program. This showed lower rates of improvement from the first evaluation. However, this could reflect a regression effect and attrition of more amenable cases back to institutional programs.

By far, the most interesting finding of this experiment was the verification it gave to other studies showing a connection between ward responses to treatment and their identification with and status in the delinquent peer group. One-half to two-thirds of wards in the three groups were classified as Delinquent Peer

Group Oriented in their relationships with other wards after one month on the programs. Both presenting problems and program failures were found to be associated with peer group orientation and status (21, pp. 19ff).

TREATMENT IN THE PRIVATE SECTOR--ELAN

The employment of private vendors of services and consultants in corrections has existed for some years now and during the 1960's there were instances in which corporations entered contracts to give vocational training to delinquents. However, private commercial enterprises offering residential treatment for disturbed and delinquent adolescents are so rare as to be almost nonexistent. One such exception is Elan.

Elan is a private residential treatment center located in four rural areas of Maine which operates on a fee for service basis and does not accept grants or subsidies. It was begun by a Boston psychiatrist and a former drug addict; it is modelled after Synanon in San Francisco and Daytop in New York. It is described in brochures as a self-help therapeutic community with a highly structured program. Many, if not most, of its residents are of middle class origin and Elan's dominant values or criteria for acceptable behavior are quite frankly designated as middle class (25).

Elan's clientele includes males and females and, for the most part, are "acting out" adolescents and post-adolescents out of control in their families and local communities, between the ages of 14 and 24 years. Some have had psychiatric careers and some delinquent careers, with histories of failures, in numerous agencies and programs. Actively psychotic individuals and criminals are not accepted, although the exact meaning of these terms likely varies with the personalized method for selecting applicants. Elan is said to take many violent, disturbed children, including drug addicts, rapists, murderers, and those with long records of assault and robbery (49, p. 358). Elan has received a number of youths referred by welfare and correctional agencies in 12 different States, many of whom were labelled as "tough cases" but still qualified under Elan's conception of acting out adolescents. According to Strasburg, about 40 percent of clients are State wards (49, p. 260).

Program

In July, 1977, Elan housed 250 residents in its six relatively autonomous units. Its program appears to be analogous to the self-help techniques for drug addicts developed at Synanon, directed to the resocialization of its residents. This is done not by specifying a formal set of privileges and responsibilities, but by assignment to particular "worker" jobs within or at the bottom of rigid hierarchical structures in the various houses. Promotion comes from worthy task performance: worker to an overseer for other workers, then a department head, next a coordinator trainee, finally a full coordinator and senior resident. In time, the resident receives a diploma, given that he successfully passes an oral examination.

Elan operates a fully accredited high school with curriculum and instruction adapted to the needs of normally progressing students, catch-up students in need of tutoring, and those previously labelled as "disciplinary problems." Students either graduate with credit equivalents from their home high schools or re-enter other schools and colleges. Two or three months before the end of their stay of about 14 or 15 months, Elan residents re-enter the local community in school or part-time work. There are 23 teachers on the staff.

How It Works

Elan has a backup staff of psychiatrist, psychologist, physician, and registered nurse, but the main treatment staff are paraprofessionals, many of whom are graduates of the center. They provide the core of treatment which consists of confrontation by peers and staff who quickly identify and point out the motivation for negative behavior. This is done in the course of interaction on the job or it may be done in scheduled group therapy, encounter sessions, and primal screams. "Specials" are sessions requested to resolve particular problems or to ventilate a sense of injustice; residents may call staff people to sessions as well as being their target. A resident who fails his tasks or is otherwise inadequate gets "shot down" or demoted down to the bottom of the job hierarchy. This can be repeated or done deliberately. Thus, generation of anxiety, frustration, and depression are part of the treatment--something in the nature of homeopathic remedies with a paramedic standing by.

Infractions of rules--the main ones being no drugs, no sex, no physcial violence--are dealt with by "haircuts," which are verbal reprimands by the whole group. Those guilty of physical violence, "bullies," are put in the boxing ring with headgear and sixteen ounce gloves to fight one minute rounds with other house residents. A whole residence may be disciplined for laxness and a "tight house" imposed which restricts privileges.

The rough, direct and uncompromising methods of Elan can be justified on grounds that no caste system exists to separate staff and residents. The resident (at least in theory) will perceive that while he is the object of discipline at one time, he may administer it on another occasion. There are no strata of custodians or "screws" against whom hostility can be sustained and rationalizations supported. Furthermore, seeing others present like himself who have succeeded gives the resident renewal of hope after failures.

Evaluation

An Elan brochure states that its retention rate is well over 90 percent. Beyond this, specific evaluation is lacking. In 1975, the Illinois DCFS became concerned about Elan and in a report charged that it was guilty of inhumane treatment of children, brain-washing, forced labor, and physical abuse. It withdrew 11 placements (31). Four other States, Maine, Massachusetts, Connecticut, and Rhode Island sent investigating teams to Elan. All concluded by endorsing Elan except the Massachusetts people who were perturbed by the use of the boxing ring (49, p. 361).

The boxing ring, it may be noted, has a past history of use in boys camps of America and still is used occasionally by physical education instructors to chasten overly aggressive high school students, usually in the guise of a boxing demonstration.

Yearly costs for residence at Elan are a little over $17,000, which is not a great deal more than that given for institutional care and community-based programs in a number of States.

An interesting dilemma for Elan is found in tension between private enrollees and State wards. This is due less to corruption of middle class youths by street delinquents than due to the demoralizing effects of rejection of middle class values by the private referrals. Thus, one population apparently consists of those who "want out" of the system, and the other of those who "want in."

CHAPTER III

ISSUES FOR DISCUSSION

Rather than trying to deal comprehensively with all possible issues related to intervention programs for the treatment of delinquency, discussion will be confined to those which are raised by programs described in this chapter. Among these are: (1) which kind of model should be the basis for program designs--the medical model or one based on human interaction, (2) whether needed innovation in programs should be brought about through a movement to change a whole system or by encouragement of pragmatic experimentation at the service delivery level, (3) whether community-based treatment is more effective than that in closed institutional settings, and (4) the forms which evaluation should take.

THE MEDICAL MODEL VERSUS HUMAN INTERACTION

It is clear that most of the programs surveyed more or less follow a medical model in which professionally trained specialists are expected to administer to adolescents assumed to have some problem, defect, or pathology, and who are in need of therapy. This is a long standing heritage of positivism in penology. Its weakness is its reliance on a mechanical model of causation which assumes that a given input or prescribed activities, such as behavior modification, will cause a particular change -- in this context, reduction of assaultiveness or of recidivism. In effect, it denies the reality of choice in the analysis of human behavior. More accurately, it denies choice to the delinquent, who is seen as a passive actor in contrast to the therapist who is an active choice maker.

One of the salient problems with this is that prescribed treatment from the point of view of the delinquent may have consequences far different from those perceived or intended by the professional treaters. From an alternative point of view of human interaction, unless therapy can be conceived as a means to the ends of the person treated, it is likely to have little effect or even may add to his problems.

Jerome Miller and his followers in the Massachusetts reforms were aware of this problem, and as a partial solution sought to bring delinquents into the process of program development; likewise, the use of contracts to involve youths in their own treatment. But contracts tend to be artificial and time consuming devices to use, and the impression is left that client involvement somehow got lost or sidetracked. This, perhaps, was because of the strong hold that professionals have on the service delivery system and the preconceptions that judges, probation officers, and lawyers have about treatment. In addition, the emphasis on individualized treatment, assessment, "diagnosis," and a treatment plan all very much reinforce the medical model.

In UDIS, workers objected to assessment procedures as manifestations of the medical model. Furthermore, the evaluation concluded that there was little pretreatment diagnosis and relatively few boys received any treatment as such. Nor was there any indication that any problems were removed at the end of the program. Consequently, the evaluators state, UDIS did not have to cure anything; rather, it created conditions leading a boy to "change his mind" about the wisdom of his delinquent behavior. This means that society, represented by UDIS, did what was necessary to get their attention and gave them some good reasons why they should not do those things anymore (42 , pp. 194-204). In other words, the "suppression effect" was due to the nature of the interaction between youth and UDIS workers which made the possibility of punishment credible.

Of course, violent, assaultive delinquents leave a question as to whether mental aberration may not be present in some cases which require medical style treatment. However, the real issue in such instances is who or whose values are dominant in the program. Elan, which represents an other-than-medical, self-help program, illustrates a different order of priorities than found in many programs. It has a staff psychiatrist, psychologist, nurse, and special educators, but mostly they are regarded as backup staff or resource people rather than as therapists. Indeed, its paraprofessionals, who carry the main burden of the program, are best seen as choice clarifiers who create conditions of self change. In Elan, punishment is made credible by the nature of daily interaction and deterrence of violence made real by the boxing ring.

REFORMING THE SYSTEM OR PRAGMATIC GROWTH

The Harvard Center evaluators believed that the reform in Massachusetts should be studied for its strengths and weaknesses as an alternative for juvenile corrections elsewhere. This refers to the method for affecting change rather than to the specific programs it has generated (2, p. 27). As noted earlier, their conclusion was that the quality and innovativeness of most programs were not high but that there were a lot of them. As in Mao Tse-Tung's cultural revolution, Miller let a hundred flowers bloom. The virtue of this, to pursue the thought of the evaluators, was that diversification of programs occurred and a wide range of adaptations to the needs of individual youths was possible. In their most recent work, the Harvard scholars have concentrated their research on the conditions for successful reform movements, and on how they can be consolidated and sustained in the face of reactionary coalitions threatening to wipe out liberal gains (2).

The problems of bureaucraticization of correctional organizations attacked by the Miller reformers are well known: entrenchment of vested interests of component occupational groups, trained incapacity, resistance to change, sabotage of effort, and the elevation of custodial and security values over the welfare of juvenile inmates. Whether these can be overcome by following a policy of continuous, politicized reform is questionable, particularly when unanticipated consequences or costs are weighted against gains. A number of responsible correctional administrators believe that Miller and his followers were seeking a panacea rather than making realistic adaptations of means to ends (51, p. 7). Admittedly, there were administrative weaknesses, fiscal difficulties, mismanagement, and program failures in Massachusetts. To some extent, however, these can be discounted as expected concomitants of accelerated social change.

A more important consideration is whether continuity of system change can be maintained, particularly with the polarization of groups and the conflict brought on by Miller's methods. Indeed, a recent report by the Harvard Center group foresees this possibility unless liberal support can be marshalled for the reform impetus (36).

Whether the innovative strategies used in Massachusetts can be transferred successfully to other States is a big question. Conditions favoring radical action are not likely to be easily duplicated. For example, the arrangement making the Director of DYS also head of the Youth Services Board, who approves paroles and services, meant that Miller could order emptying of juvenile institutions with a stroke of the pen. This gave him power not found in many other States. Finding a college or university willing to house a hundred or so juvenile delinquents for a month of transition, as done in Massachusetts, likewise might prove difficult in many areas. Also, whether vendors are numerous enough in other States to allow wholesale purchase of services, Massachusetts style, is dubious.

Moreover, there is a question whether tactics used by Miller, such as unauthorized expenditures, can be used more than once. Thus, when Miller went to Illinois, conservative forces, in a real sense, were forewarned. In both Illinois and in Pennsylvania, funds for new programs had to be obtained from outside sources.

Some problems of dealing with delinquent youth may be endemic in any and all systems no matter where located. Thus, a good deal of the resistance to Massachusetts reforms grew up around the problem of the serious delinquents and the issue of secure facilities for these and violent offenders. Many of the Intensive Care programs and installation of milieu therapy worked poorly or not at all. One can suspect that wooly thinking was at work, especially in some of the concept programs. The values of the Miller style reformers seem to have been to "protect the kids" at any and all costs, but the general population, many correctional administrators, youth service workers, and legislators may not share this order of values.

Unpleasant things also must be said about experimental or exemplary programs pragmatically developed either locally or by large organizations. Often these emerge because money is available or needed to fund an ongoing agency. Original proposals may be ignored or changed in their administration. Programs may be supported because they "seem like a good thing." They may be gimmicky or products of what Goffman called the "tinkering trades." The more substantial programs tend to be built around remedial education, employment, and recreation. Granted that schooling and job opportunities are necessary factors of rehabilitiation in many cases, they are not in themselves sufficient for this end.

Even when exemplary programs are demonstrably worth emulating, there is no assurance that, like farm demonstration plots, they will be copied in other areas. For this there seems to be no better means than the use of publicity, recognition awards, grants, and possibly subsidies. Grants, of course, are most commonly employed for this purpose. The experience with probation subsidies in California suggests that new programs may be disseminated through a built-in monetary reward system but administrative difficulties often arise. Furthermore, values and goals in the overall correctional system may be distorted when it or portions of it become dependent on what may be an unstable form of outside income (9, p. 199).

CLOSED INSTITUTIONS OR COMMUNITY-BASED TREATMENT

Deinstitutionalization is predicated on the idea that rehabilitation is difficult or impossible in institutional settings, which also are likely to encourage brutality and inhumane treatment of inmate populations. At this point, thinking on the subject grows vague for it is unclear whether this implies that any alternative is preferable to incarceration, whether rehabilitation will be successful if undertaken in the community or whether the latter should be the choice because it is cheaper. A more sophisticated justification for community treatment is that problems of reintegration of youths into normal living are greatly diminished if they have not been removed, isolated, and exposed to the artificial controls and cultures of an institution for substantial periods.

None of the programs examined in this chapter encourage a conclusion that community-based projects are more successful than institutions according to the simple measure of recidivism, although recidivism research leaves much to be desired. However, one of the most extensively evaluated programs, the California Probation Subsidy, revealed that augmented use of probation in various forms did not produce any significant differences in recidivism between institutional parolees and youths under intensive probation, nor between the latter and those put into regular caseloads.

If the conclusions of the UDIS evaluation are accepted, they weaken the case for the superiority of community-based treatment. First, they indicate that changes in arrest rates of chronic delinquents became more favorable with the level of intervention; the more drastic the placement, the greater the reduction in police contacts (42, p. 200). Moreover, level III placement, out of town and residential, was more effective in lower recidivism terms than either at-home or group-home placements (42, p. 212).

One of the main reasons given for the ineffectiveness of institution programs is the presence of inmate social systems which foment resistance and recalcitrance among the inmates. This was a conspicuous finding in the CYA intramural programs for assaultive offenders, showing that youths identified with the delinquent peer groups were more likely to be program failures. Some social scientists have posited that inmate subcultures are functional consequences of deprivations related to the nature of total institutions. However, an alternative theory is that inmate behavior may be a product of criminal culture they bring with them to prisons. It also must be recognized that not all inmates participate in inmate social systems.

Most of the theorizing on this issue has dealt with adult prison populations. An exception was Empey and Erickson's use of the functional theory to design the Provo Experiment (5) and later the Silverlake Experiment (6), both of which stressed the need to more or less co-opt the delinquent peer group as an instrument of rehabilitation. Opposed to this is the notion of eliminating peer group systems or creating conditions which diminish their influence vis-a-vis that of an intervention program. Somewhere between these two positions is one which views the effects of inmate organization as problematical, whose variable forms and relation to programs is something to be researched. This holds that a number of different influences may be at work to assign inmate meaning to programs and subsequently through interaction affect inmate behavior.

Research by McEwen on 23 community-based residential programs in Massachusetts points to the need for a more heuristic analysis. He was struck by the fact that two programs, quite differentiated in degrees of freedom accorded residents, both of whom had far fewer privations than traditional institutional cottages, nevertheless had inmate systems strikingly similar (12, p. 12). A further anomaly was a program with a high degree of privation and denial of freedom which had no inmate social system and in which youths were well integrated into the imposed organizational structure.

McEwen's investigation further questioned whether community contact by youths in residential programs, e.g., living at home, weekend home visits, work and school outside, facilitated or complicated the working of various programs. He found that high levels of community contact made it more difficult to supervise and control youths and thereby alter youth values and cultures. They also ran contrary to the achievement of high participation in programs. Interaction was less intense and the youth social structure less well defined. The desirable features of programs were said to be equality and participation (12, p. 196f).

While this does not necessarily vindicate a return to a regime of institutional treatment, it does counsel reconsideration of the merits and demerits of small, closed correctional settings. When attempting to change the behavior of chronic delinquents given to serious or violent offenses, it seems fairly obvious that some kind of direct, continuous interaction is necessary. This must be sufficiently intense to break through fixed ways of acting and disrupt the bonds and contacts which reinforce delinquent behavior. Situations have to be engineered which stimulate self-questioning and create anxiety about delinquent status and aberrant personal identity sufficient for youths to entertain new ways of living. It is also very likely that their choices have to be limited in terms of some consistent set of values held by others.

The development of closed residential programs is fraught with a certain amount of risk, depending on which groups and whose values are dominant. While freedom to experiment and employ unconventional means is highly desirable, excesses may occur, as was true in some of the concept programs in Massachusetts. Behavior modification as a treatment technique seems to have lent itself to abuse at different times and places, perhaps because of its conception as an impersonal scientific method for which staff do not take responsibility as persons. Accountability for staff policies and acts must be established through organizational inspection and feedback. Beyond this, an atmosphere of kindness and affection, however rough, must be maintained in rehabilitation as in any teaching process with children and youths.

The evaluators of the Massachusetts reform believed that Massachusetts had done a fairly good job of separating out the serious offender, but as in most States had few answers, solutions, or options in terms of treatment. It seems to them that what was needed was a variety of demonstration projects ranging from closed to open settings with close monitoring and evaluation. Furthermore, youths coming out of secure programs into supportive nonresidential programs were doing better than those who were simply dumped back on to streets with no formal supports.

EVALUATIONS

The quality of the evaluations, in the projects receiving attention in this chapter were very uneven, and in some cases none was available. Evaluations tend to be strong on description of ideal elements of programs and may include tabulations of results but usually they contain very little indication of how the program actually developed and how it operated. The case management technique is an instance of a potentially effective means for solving a long standing problem of insuring that a youth actually receives services prescribed for him, promised or contracted for in the course of referrals. However, none of the evaluative information for Massachusetts, Illinois, and Pennsylvania programs included more than general comments on the operation of case management. Tracking systems have been in use in Massachusetts and Illinois, but a separate evaluation of them has not been made.

Evaluation methods in social science generally are not well developed and findings in particular studies usually can be and are questioned on methodological grounds. But even more important is the theoretical question they raise about causation. This refers to an issue already raised, namely the insufficiency of social science research based on a mechanical model of causation which assumes that any given result has been caused by a prior existing factor, so that one must believe that X causes Y and that's that. However, if observations are made on symbolic interaction, which includes the influence of values and allows that human beings make choices, then a different kind of thinking about evaluation is possible. One can appreciate that something more happens in human enterprises than can be put in quantitative, statistical terms. This refers to the fact that in dynamic situations, where deviance (delinquency) and reaction are involved,human beings, both deviant and control agent,respond to the consequences of their previous acts. This then enters into and becomes a variable influence on subsequent choice and decisions.

The concept which allows those studying human social control efforts to take this influence into consideration is feedback. Using this idea, a researcher recognizes that evaluation is a generic process; all people evaluate situations, make choices, and act. Individual actions are converted by aggregation of values and interaction into group or collective action. All of this is to say that all human beings evaluate situations and that evaluation of delinquency treatment projects is simply a formal system procedure which ideally will use an analytical model that includes the operation of evaluation and choice at the everyday commonsense level (30).

The UDIS evaluation, as already noted, came closest to this conception, although it ends with it rather than begins with it. The empirical findings of McEwen were that groups of delinquents may react quite differently--even in opposed ways--to the same kinds of residential controls. Indications were that the definitions of the situation, or the situation as evaluated by the youths, had played a significant part in their varying responses.

CHAPTER IV

SUMMARY AND RECOMMENDATIONS

SUMMARY

This report has surveyed a number of intervention programs selected on the basis of their recency, differentiation, and innovativeness. These range from large scale attempts to revolutionize and significantly alter the juvenile justice system down to programs which introduce some novel method for the delivery of services and, in some cases, no more than comparatively brief, unusual, or exotic experiences.

A hard look at the programs reveals that there are a limited number of things which can be done to or for serious delinquents, although the ways of doing them can and do vary considerably. These do not differ too much from what is done generally in trying to treat delinquents. Basically, correction workers can provide remedial education, vocational training, recreation, and counseling. This last takes two main forms: one-to-one talk and verbal interaction within small groups. For violent, assaultive delinquents, of course, there must be added the medical remedies of psychotropic drugs, plus various restraining and stimulating techniques traditionally used in mental hospitals.

Most of the programs scrutinized tended to follow a medical model in the sense that a professional staff did something to or for the serious delinquent. This was particularly true of the few programs in existence for violent and assaultive delinquents. An underlying assumption was that delinquency is a symptom of some defect or disorder which takes the form of "acting out." An opposing point of view is that the serious delinquent has developed a destructive self or identity based on persistent deviance. Needed is a situation encouraging resocialization, calling for deliberately induced self-doubt, anxiety, depression, and frustration. The only program clearly organized around the latter, a self-help model, was Elan.

Actually, the program planners in Massachusetts, Illinois, and Pennsylvania were aware of the issues surrounding the medical model for treating serious juvenile offenders, but problems of management, funding, and program survival took precedence over those of program goals and their fulfillment. Attempts were made to recognize the self-help aspect of treatment by directives to bring serious offenders into program planning, but evidence of success in doing so was slim, perhaps because of too great a reliance on behavior contracts.

The only unequivocal claim to overall success for a program in terms of recidivism was made by the evaluators of UDIS, who held that both the institutional program of the State (DOC) as well as the experimental program had a suppression effect on delinquent actions. The interpretation of this digressed from the medical model by arguing that youths were placed in situations or so handled that probabilities of punishment became credible and that they made rational choices to change their ways of acting. This amounts to a kind of revisionist version of classical penology, but made amenable with deterrence and labeling theory of deviance.

The Massachusetts reforms led to a large proliferation of programs, but no claim that recidivism was any less for delinquents under community-based programs than it had been for those previously held in institutions. The evaluators at the Harvard Center, however, found virtue in all of this on grounds that handling delinquents in Massachusetts became more humane and diversity of programs gave great flexibility necessary for individualized treatment.

Partisans of the Massachusetts reforms believe that they offer a model for correctional change. However, conditions for such wholesale renovation of juvenile corrections probably were peculiar to that situation and would be difficult to reproduce in many other States. Since Miller's departure from the State, programs for serious offenders have been changed, abandoned, and reorganized. Yet, Miller has cast a long shadow and the ideas he sought to incorporate into juvenile correctional programs pose continuing questions for consideration.

In one respect, his obvious distaste for any coercive control of juveniles, Miller was over-zealous. This is especially true in struggling with the thorny problem of the violent and destructive delinquent. The UDIS evaluation cast doubt on the claim that the "least drastic" alternative would be the most successful. Moreover, in Miller's own jousting ground, Massachusetts, some of the Harvard research questioned whether continued close contacts with the community did not actually diminish the effectiveness of open programs, primarily because they lessened participation, monitoring, and feedback.

It may be significant that programs as far apart as the Minnesota experiment and Elan begin with closed residential treatment and then proceed to a more community-based type of treatment.

Generally, the quality of evaluations of the programs examined here was not high. In part, this was due to difficulties in obtaining reliable and complete data, but it also may be a consequence of reliance upon the experimental model. The difficulty with such evaluations is their failure to show how changes occur and how variant human evaluations and choice affect outcomes of programs.

The issues raised by the program survey concern the utility of the medical model, system versus service delivery changes, closed residential versus community-based treatment, and methods of evaluation.

RECOMMENDATIONS

The small number of programs identified specifically for serious juvenile offenders and the general state of uncertainty in the field of corrections caution against any but the most tentative recommendations for policymakers. Nevertheless, some ideas emerge which are worth further thought and possible research. These will be discussed in order of their presumed importance:

1. A number of analytical studies of nonmedical models for intervention should be commissioned. These should explore alternative ways of instituting intervention programs which are in other than the conventional experimental form. These might conceivably include: the middle class family model, peer group models, self-help model, and possibly a "shape up or ship out" military model. This last might epitomize the part of deterrence and choice in human behavior change.

2. Continued support should be given to studies of the general nature of those being done by the Harvard Center, the sociopolitical aspects of intervention into problems of children and youth. However, more attention should be given to in-depth study of intervention at the lowest level of social interactions.

3. Intervention with hard-core, violent offenders by means of small, closed residential centers should be given careful consideration. Programs should be evolved using a number of different models but which allow comparison along similar dimensions. Apart from McEwen's Massachusetts research findings, sociologists going back to Cooley and Sutherland have agreed that the most powerful influences shaping or reshaping human behavior are asserted in small, face to face groups characterized by continuous, personal interaction. This wisdom should be perpetuated in intervention schemes. In addition to the dimensions of size and continuity for intervention comparisons should include those of equality and participation.

4. A law center or institute with the support of the legal profession should be commissioned to study means for reconciling maximum experimentation in intervention with accountability for protecting rights of juveniles. This recognizes that small groups, as well as large bureaucratic organizations, may evolve in ways which distort the order of values needed to give priority to the welfare of children and youths.

5. The nature and meaning of community-based intervention needs analysis and empirical investigation. The very idea of community is a debatable term--and it may not exist in urban areas--except as it is expressed by activities of organized groups. Community-based may mean nothing more than the existence and coordinated delivery of helping services. If so, then the conception of case managers or service brokers is highly important, but needs further formulation and research into procedures built on the idea.

6. Youth advocacy on its face merits expanded funding and support. Use of college students, women especially, as youth advocates is a facile way to utilize a readily available source of energy, interest in helping others, and free time. College and university students can be recruited at relatively small costs, particularly where arrangements allow some form of work/learn credit. Their utilization can, in some degree, help minimize the "burn-out" problem encountered among staff in programmatic intervention.

7. Further experimentation with the use of paraprofessionals and community workers should be supported. This is related to problems of discovery and coordination of helping services in urban areas with heavy minority concentrations. It also addresses some of the problems of equality and participation noted in recommendation No. 3.

8. The problem of high unemployment among minority group teenagers should be recognized in devising aftercare programs. As noted, remedial education and employment are not sufficient but rather necessary elements of the intervention and change process. Inasmuch as many programs tend to fill up with disproportionate numbers of minority groups, problems peculiar to minority groups require special attention.

APPENDIX A

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REFERENCES

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PART D

CONFIDENTIALITY OF JUVENILE RECORDS

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EXECUTIVE SUMMARY

This report on confidentiality of juvenile records is based on information contained in the Reporters' Guide to Juvenile Court Proceedings (1).

Based on data available, the public and the press appear to be ordinarily excluded from (1) juvenile court hearings, (2) inspection of juvenile records, and (3) the right to disclose an alleged juvenile offender's identity under jurisdiction of the juvenile justice system. These prohibitive measures may be stated in the statutes, or the jurisdiction may empower the court to use discretion on the elements within the issue of confidentiality. Exceptions to this practice vary greatly from one jurisdiction to another, but evidence of public disclosure can be found permissible by statute on occasions when the juvenile under jurisdictional consideration is alleged to be a repeat, serious, or repeat-serious offender. No restrictions are apparent on confidentiality of information when the person under 18 is waived to the criminal court.

Confidentiality of information on persons in the juvenile justice process is apparently not as likely to be maintained for serious or chronic offenders.

CHAPTER I

CONFIDENTIALITY OF INFORMATION ON JUVENILES

INTRODUCTION

Confidentiality of juvenile court proceedings has been a topic of controversy since the beginning of the juvenile justice system. Each of the 51 jurisdictions have, in the interest of the juvenile, created statutes which may deny public access to certain elements within the juvenile justice process. This chapter intends to cover the following areas:

- Public Attendance at Juvenile Court Hearings
- Public Inspection of Juvenile Records
- Publication of Juvenile Identity

The results include elements exclusively within the parameters of the juvenile justice system, and therefore do not include those juveniles who have been waived, or transferred, into the adult system of criminal proceedings.

The information assembled for the display tables has been extracted from a document published by the American Newspaper Publishers Association (1, pp. A-1 through A-84). Included in the publication are portions of statutes appropriate to the subject of confidentiality within each of the 51 juvenile court jurisdictions.

For the purposes of this report, the term "public" shall include both the news media and the general public unless noted otherwise. The phrase "persons having a direct interest" in the case usually is interpreted to include such individuals as the involved juvenile, the parents or legal guardians of the juvenile, witnesses, juvenile justice system officials, and other pertinent agency representatives. The term "all records" ordinarily includes court or legal records, social or medical, or clinical records, and law enforcement records.

PUBLIC ATTENDANCE AT COURT HEARINGS

As shown in Table 1 (p. 233),33 (or 65 percent) of the 51 jurisdictions ordinarily exclude the public and news media from attending juvenile court hearings, although the statutes usually provide allowance for the local court to admit those persons having a direct or legitimate interest in the case. Eleven jurisdictions (or 21 percent) empower the juvenile court to exclude the public and the press, although the statutes do not ordinarily exclude the public and press. Four jurisdictions (or 8 percent) ordinarily admit the public into hearings, but provide the court with the power to exclude the public if deemed appropriate. Three jurisdictions (or 6 percent) do not appear to have existing provisions in the statutes regarding public attendance in juvenile hearings.

Of the 33 jurisdictions which ordinarily exclude the public from attendance in the juvenile hearings, three (Illinois, Iowa, and New Mexico), by statute, permit the news media to attend hearings normally closed to the public-at-large; two (Iowa and Utah) permit the news media to attend when the case has been classified as a serious offense; and another three (Delaware, Maine, and Montana) permit both the public and the news media to attend juvenile hearings involving serious offenses. One jurisdiction (South Dakota) generally allows the public to attend hearings; however, the statute empowers the juvenile respondent (i.e., the juvenile, parents of the juvenile, or lawyers for the juvenile) to request that the hearing be closed to all but the press who, by statute, are admitted as a party having a direct interest in the case. The data shows a vast amount of discretionary power on the part of the court regarding public attendance at juvenile court hearings.

Evidence shows willingness on the part of some jurisdictions to allow the news media to attend closed hearings, subject to certain conditions as set by the legislative provisions. More openness for the general public or the news media is present when the case has been classified as a serious offense.

TABLE 1

PUBLIC ATTENDANCE AT JUVENILE COURT HEARINGS

Condition	Jurisdictions	
	Number	Percent
General public ordinarily excluded by State statute; exception at discretion of the court	33*	65%
General public not ordinarily admitted or excluded according to State statute; exceptions at discretion of the court	11**	21%
General public ordinarily admitted by State statute; exceptions at discretion of the court	4***	8%
No provisions exist in State statutes regarding general public admittance or exclusion	3****	6%

Source: Developed by National Juvenile Justice System Assessment Center from previously cited American Newspaper Publishers Association document.

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*Three States (Illinois, Iowa, New Mexico) allow news media attendance at hearings normally closed to general public; three States (Delaware, Maine, Montana) allow general public attendance at hearings involving felony cases; two States (Iowa, Utah) allow all news media attendance at hearings involving a serious offense.

**Arkansas, Indiana, Kansas, Maryland, Michigan, New York, North Carolina, Ohio, South Carolina, Tennessee, Texas.

***Colorado, Florida, South Dakota, Washington; one State (South Dakota) ordinarily allows general public attendance at hearings but empowers court to close the hearing if requested by the juvenile respondent; however, the press has been included in "such persons as may have a direct interest in the case" for admittance (1, p. A-68).

****Nebraska, New Jersey, West Virginia.

PUBLIC INSPECTION OF JUVENILE RECORDS

As shown in Table 2 (p. 235), 42 (or 80 percent) of the 51 jurisdictions in the United States ordinarily prevent public inspection of records (e.g., social, medical, clinical, legal, court, or law enforcement) on juveniles being handled by the juvenile justice system unless approved by the court on a case-by-case basis.* Twenty-three of these same 42 jurisdictions, however, have statutory provisions that will allow a limited number of persons to inspect the records (e.g., juvenile's parents or guardians, officers of the court, attorneys for the juvenile, social agencies and clinics, governmental officials). Social and medical records may ordinarily be inspected by the parents and attorneys of the juvenile or by the clinic or institution from which the juvenile is receiving care. Other parties which are deemed to "have a proper or legitimate interest in the case or work of the court" may be mentioned in the codes of each individual jurisdiction or such persons may be permitted to inspect records with the court's permission.

Six (or 12 percent) of the 51 jurisdictions allow legal records to be inspected by the public.** Legal records may include transcripts of the court, petitions, records of proceedings, notices, decrees, and judgments. Usually, the legal record of the court is segregated from the juvenile's private record of social and medical history. The proceedings and other legal matter in the case are entered into a log that may be used for statistical purposes or research studies, as long as the case data no longer bear the juvenile's identity.

One*** (or 2 percent) of the 51 jurisdictions in effect permits public inspection of legal records in serious incidents since the public is allowed in hearings involving a serious offense by statute (1,

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*"This is a result, in part, of the requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 that grants to States to improve the treatment and services in facilities be conditioned upon the States developing a procedure 'for assuring appropriate privacy with regard to records relating to such services'" (1, p. 6)

**Arkansas, Idaho, Iowa, Louisiana, Mississippi, and Rhode Island.

***Maine.

TABLE 2

PUBLIC INSPECTION OF JUVENILE RECORDS

Condition	Jurisdictions	
	Number	Percent
Public inspection of all records ordinarily allowed with court permission only	42	80%
Public inspection of legal records allowed	6*	12%
Public inspection of legal records allowed if case classified serious	1**	2%
Public inspection of legal records allowed if case classified repeat	1***	2%
Inspection of police records allowed to news media representatives	1****	2%

Source: Table developed by National Juvenile Justice System Assessment Center from previously cited American Newspaper Publishers Association document.

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*Arkansas, Idaho, Iowa, Louisiana, Mississippi, Rhode Island; Rhode Island provides court records for public inspection, except that of hearings in matters pursuant to Section 14-1-5 in General Laws of Rhode Island (1, p. A-66).

**The State of Maine allows public inspection of legal records due to the open hearings granted by statute for serious offender cases (1, p. A-36).

***New Mexico.

****Wisconsin news media representatives are allowed to inspect records (without a court order) on the grounds that they do not reveal the identity of the juvenile (1 , p. A-82).

p. A-36). One* (or 2 percent) of the 51 jurisdictions allows public inspection of legal records on the condition that the juvenile under jurisdiction is alleged to be a repeat offender (1, p. A-53). One** jurisdiction (or 2 percent) of the 51 jurisdictions allows inspection of police records to representatives of the news media on the condition that the juvenile's identity remain undisclosed (1, p. A-82).

PUBLICATION OF JUVENILE IDENTITY

As shown in Table 3 (p. 237),47 (or 92 percent) of the 51 jurisdictions ordinarily prohibit the publication of a juvenile's identity without a court order. Violations of the provisions concerning public disclosure may result in the charge of a misdemeanor. Two jurisdictions*** mandate the court to release the name of a juvenile if the juvenile is under the jurisdiction of the court for a second or subsequent time. One jurisdiction**** (or 2 percent) of the total requires the release of a juvenile's identity (as well as the identity of the parents of the juvenile) upon request of the news media if the juvenile is arrested for a serious offense. One jurisdiction***** (or 2 percent) of the 51 jurisdictions allows public disclosure of a juvenile's identity if the juvenile is found to be a repeat serious offender, although the statute includes a clause to allow the court with the discretionary power to prohibit disclosure if found there is "good cause" to do so in individual cases.

Confidentiality of information on persons in the juvenile justice process is apparently not as strictly to be maintained for serious or chronic offenders.

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*New Mexico.

**Wisconsin.

***Georgia, Mississippi (1, pp. A-22, A-43 respectively).

****Delaware (1, p. A-14).

*****Alaska.

TABLE 3

PUBLICATION OF JUVENILE'S IDENTITY

Condition	Jurisdictions	
	Number	Percent
Publication of juvenile's identity ordinarily prohibited without a court order	47	92%
Publication of juvenile's identity allowed if repeat offender	2*	4%
Publication of juvenile's identity allowed if serious offender	1**	2%
Publication of juvenile's identity allowed if repeat serious offender; exceptions at discretion of court	1***	2%

Source: Table developed by National Juvenile Justice System Assessment Center from previously cited American Newspaper Publishers Association document.

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*Georgia, Mississippi (1, pp. A-22, A-43 respectively).

**Delaware (1, p. A-14).

***Alaska (1, p. A-5).

APPENDIX A

REFERENCES

REFERENCES

1. American Newspaper Publishers Association, ed. Reporters' Guide to Juvenile Court Proceedings. Washington, D.C.: American Newspaper Publishers Association, October 1978.

GENERAL APPENDIX A

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